TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920

No. 384

PAUL J. PEPPE, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED JANUARY 20, 1921.

(17,273.)

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SC US
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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 3, 1899.

1 The United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein Paul J. Petit is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota, this third day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

CHAS. M. START,
Chief Justice Supreme Court of Minnesota.

To the State of Minnesota.

Due service of the above citation by copy is hereby admitted this fourth day of January, A. D. 1899.

W. B. DOUGLAS,
Attorney General of the State of Minnesota,
Per C. W. SOWERBY.
FRANK HEALY AND
H. D. DICKINSON,
Attorneys for State.

2 [Endorsed:] Original. Paul J. Petit, plaintiff in error, *vs.* State of Minnesota, defendant in error. Citation. Benton & Molyneaux, attorneys and counselors, 302-304 N. Y. Life building, Minneapolis, Minn. Certified. Filed Jan. 9, 1899. Darius F. Reese, clerk.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between The State of Minnesota, plaintiff, and Paul J. Petit, defendant, wherein was drawn in question the validity of a statute of the State of Minnesota on the ground of the said statute being repugnant to the Constitution and laws of the United States and the decision was in favor of the validity of said statute, a manifest error hath happened, to the great damage of said Paul J. Petit, as by his complaint appears, we, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done

to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the third day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

HENRY D. LANG,
Clerk of the Circuit Court of the United States for the District of Minnesota.

Allowed by—
CHARLES M. START,
Chief Justice of the Supreme Court of Minnesota.

4 [Endorsed:] Paul J. Petit, plaintiff in error, *vs.* State of Minnesota, defendant in error. Writ of error. Benton & Molyneaux, attorneys and counselors, 302-304 N. Y. Life building, Minneapolis, Minn. Certified. Filed Jan. 9, 1899. Darius F. Reese, clerk.

5 To the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota:

Now comes Paul J. Petit and respectfully alleges and shows as follows:

1st. That your petitioner is a citizen of the United States of America and of the State of Minnesota, and is a barber by trade, residing in and carrying on a barbering business in the city of Minneapolis, in the State of Minnesota.

2nd. That heretofore an act was passed by the legislature of the State of Minnesota in the year 1885 and is now in force, being section 225 of the Penal Code of the State of Minnesota for the year A. D. 1885, which provides as follows:

"All labor on Sunday is prohibited except the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community." That on March 7th, A. D. 1887, an act was passed by the legislature of the State of Minnesota as follows:

"Be it enacted by the legislature of the State of Minnesota; Sec. 1. That sec. 225, chapter 1, title 10 of the Penal Code of the State of Minnesota is amended so as to read as follows: Section 225, *serval* labor. Labor on Sunday is prohibited except works of necessity or charity. In works of necessity or charity is included whatever is

needful during the day for good order, health, or comfort of the community; provided, however, that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity. Section 2 of this act shall take effect and be in force from and after its passage. Approved March 7, 1887." See chapter 54 of the General Laws of Minnesota, 1887.

3rd. That on March 2, 1898, one William McQuoid filed a complaint in the municipal court of the city of Minneapolis, Hennepin county, Minnesota, as follows:

6 "STATE OF MINNESOTA, } ss:
County of Hennepin, }

"Municipal Court, City of Minneapolis.

"William McQuoid, being duly sworn, makes complaint to the above-named court and says that on the 6th day of March, A. D. 1898, at the city of Minneapolis, in said county of Hennepin and State of Minnesota, Paul J. Petit then and there did wilfully, unlawfully, and wrongfully do and perform labor on said day, which said day was then and there the first day of the week, commonly called Sunday, in that said Paul J. Petit did then and there keep open a barber shop for the purpose of cutting hair and shaving beards, at that certain barber shop known and described as No. 600 Nicollet avenue, and did then and there in said barber shop wilfully, unlawfully, and wrongfully shave with a razor the face and beard of one John Doe, whose true name is to complainant unknown; which said labor was done as aforesaid and was not then a work of necessity or charity, contrary to the statutes in such case made and provided and against the peace and dignity of the State of Minnesota.

"Wherefore complainant prays that said offender may be arrested and dealt with according to law.

"W. McQUOID.

"Sworn to and subscribed and complained of before me this 7th day of March, 1898.

"H. MOORE,
"*Deputy Clerk of Municipal Court.*"

That afterwards, on March 7th, 1898, a warrant was duly issued, under and pursuant to said complaint, for the arrest of said Paul J. Petit, charging him with the violation of said act as set out in said complaint. Petitioner was afterwards, on the 16th day of March, A. D. 1898, tried before said municipal court of the city of Minneapolis, Hennepin county, Minnesota, upon said charge and fined ten ($10.00) dollars; that a stay was taken, staying the execution of said judgment, and a motion for a new trial was made therein; which motion was denied by said municipal court, and an appeal was duly taken from said judgment of conviction and order denying said motion for a new trial to the supreme court of the State

of Minnesota; which said order and judgment was afterwards, on the — day of December, A. D. 1898, duly affirmed by said supreme court of the State of Minnesota; that said supreme court of the State of Minnesota is the highest court of law or equity in said State of Minnesota in which a decision could be had in said suit, and the final judgment was rendered in said court and en-
7 tered in said clerk's office against said defendant, adjudging him guilty, as found by said municipal court of the city of Minneapolis on the — day of December, A. D. 1898; that said petitioner claimed at said trial in said municipal court and the ground on which said appeal was taken to the supreme court and said conviction was contested by the petitioner is that said statute hereinbefore quoted is void, not only because it is an improper exercise of the police power of the State of Minnesota, but void also because it is in violation of the 14th amendment of the Constitution of the United States, providing "nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law."

4th. That your petitioner is advised by counsel, and verily believes, that this is a case provided for by section 709 of the Revised Statutes of the United States, in which the validity of said statute is drawn into question as being repugnant to the Constitution of the United States and to the rights granted thereunder to citizens of the several States, and where a decision of the highest State court has been rendered in favor of said stat-e.

5th. That it was adjudged by said supreme court and by its final judgment in said suit that said statute hereinbefore quoted was not repugnant to or in violation of said provision of the Constitution of the United States hereinbefore quoted, and it was adjudged by said court that your petitioner was not thereunder deprived of the equal protection of the laws and was not deprived of his property without due compensation or due process of law, contrary to the provisions of the 14th amendment of the Constitution of the United States; all of which appears in the records, files, and pleadings in said suit on file in the office of the clerk of said supreme court, whereby manifest error has happened, to the great damage of said defendant.

8 Wherefore the said petitioner prays for the allowance of a writ of error and for such other process as may cause the same to be corrected by the Supreme Court of the United States.

BENTON & MOLYNEAUX,
Attorneys for said Petitioner, Paul J. Petit.

Allowed:

CHARLES M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Paul J. Petit, duly sworn, says that he is the petitioner in the foregoing petition; that he has read said petition and knows the

contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

PAUL J. PETIT.

Subscribed and sworn to before me this 21st day of December, A. D. 1898.

JOSEPH W. MOLYNEAUX,
[SEAL.] *Notary Public, Hennepin County, Minn.*

9 [Endorsed:] Benton & Molyneaux, attorneys and counselors, 302–304 N. Y. Life building, Minneapolis, Minn.

10 Know all men by these presents that we, Frederick D. Underwood and Paul J. Petit, are held and firmly bound unto the State of Minnesota in the full and just sum of two hundred and fifty ($250.00) dollars, to be paid to the said State of Minnesota or its attorneys or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this third day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, in the supreme court of the State of Minnesota, in a suit pending in said court between The State of Minnesota, plaintiff, and Paul J. Petit, defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Minnesota, citing and admonishing it to be and appear at the Supreme Court of the United States, to be holden at Washington the second Monday of October next: Now, the condition of the above obligation is such that if the said Paul J. Petit shall prosecute said writ of error to effect and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

PAUL J. PETIT. [SEAL.]
FREDERICK D. UNDERWOOD. [SEAL.]

Sealed and delivered in presence of—
HENRY W. BENTON.
J. W. MOLYNEAUX.

Approved by—
CHARLES M. START,
Chief Justice of the Supreme Court of Minnesota.

We hereby approve above bond.

FRANK HEALY AND
H. D. DICKINSON,
Attorneys for State.

Jan'y 3rd, 1899.

11 [Endorsed:] Paul J. Petit, plaintiff in error, *vs.* State of Minnesota, defendant in error. Bond. Benton & Molyneaux, attorneys and counselors, 302–304 N. Y. Life building, Minneapolis, Minn. Certified. Filed Jan. 9, 1899. Darius F. Reese, clerk.

12 In the Supreme Court of the United States.

PAUL J. PETIT, Plaintiff in Error,
vs.
STATE OF MINNESOTA, Defendant in Error. } Assignments of Error.

The plaintiff in error respectfully submits that the supreme court of Minnesota erred in this:

1. Said court in and by said judgment held valid that certain statute of the State of Minnesota, viz., section 225 of the Penal Code of the State of Minnesota for the year A. D. 1885, which provides as follows: "All labor on Sunday is prohibited, except works of necessity or charity. In the works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community," with the amendment thereto passed by the legislature of the State of Minnesota on March 7th, A. D. 1887, which reads as follows:

"Be it enacted by the legislature of the State of Minnesota, section 1, that section 225, chapter 1, title 10 of the Penal Code of the State of Minnesota is amended so as to read as follows:

"SECTION 225—*Serval* labor.—Labor on Sunday is prohibited except works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for the good order, health, or comfort of the community; provided, however, that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity. Section 2 of this act shall take effect and be in force from and after its passage. Approved March 7th, A. D. 1887." See chapter 54 of the General Laws of Minnesota for the year A. D. 1887.

2. The court in and by said judgment adjudged that said statute as amended in the year A. D. 1887 did not violate that clause of the Constitution of the United States which provides that "no person shall be deprived of life, liberty or property without
13 due process of law, nor deny any person within its jurisdiction the equal protection of the law."

3. In and by said judgment the court adjudged that the claim and plea of the said defendant to the effect that said statute as amended in the year A. D. 1887 did violate the said clause of the Constitution of the United States be overruled and held bad, and also held and adjudged that the claim and plea of said defendant to the effect that said amendment violated the said clause of the Constitution of the United States be overruled and held bad.

4. In and by said judgment the court adjudged that said statute of the State of Minnesota, including said statute as amended in the year A. D. 1887, was a valid and lawful police regulation, overruling

therein and thereby the claim of said defendant that it was not a police regulation and was invalid under and by virtue of the clause before mentioned of the Constitution of the United States.

5. That said court erred by the judgment entered in the above-entitled action against the contention of the defendant in error that the conviction of said defendant in said action was valid, and that said statute hereinbefore set out was not at variance with the 14th amendment of the Constitution of the United States and was a proper exercise of the police powers of the State of Minnesota, and it is contended by said defendant that judgment ought to have been given for said Paul J Petit, acquitting him and releasing him from the charge made against him in said action, on the ground that said law hereinbefore mentioned is unconstitutional and repugnant to the 14th amendment of the Constitution of the United States.

PAUL J. PETIT,
By BENTON & MOLYNEAUX,
His Attorneys.

Dated January 3d, A. D. 1899.

14 [Endorsed:] 11314. Paul J. Petit, plaintiff in error, *vs.* State of Minnesota, defendant in error. Assignments of error. Benton & Molyneaux, attorneys and counselors, 302–304 N. Y. Life building, Minneapolis, Minn. Certified. Filed Jan. 9, 1899. Darius F. Reese, clerk.

15 *Assignments of Error Made and Filed by Defendant and Appellant in said Supreme Court.*

1. The court erred in permitting any evidence to be introduced under the complaint in this action over defendant's objection to the same, as appears by paper books, folios 15 to 17.

2. The court erred in refusing to dismiss said action and discharge the said defendant, as appears by paper book, folios 47 to 49.

3. The court erred in finding the said defendant guilty of the charge made against him.

4. The court erred in sentencing said defendant, as appears by the paper book herein.

5. The court erred in refusing defendant a new trial and in denying defendant's motion therefor.

6. The court erred in not holding to be unconstitutional the law under which the complaint in this action is drawn, viz., the amendment of 1887 to sec. 6513, Statutes of Minnesota.

STATE OF MINNESOTA, } ss:
Supreme Court, }

I, D. F. Reese, clerk of the supreme court of the State of Minnesota, do hereby certify that the above and foregoing assignments of error *was* made and filed by defendant and appellant in the above-entitled action of The State of Minnesota, respondent, *vs.* Paul J. Petit, appellant; said assignments of error *was* filed in said supreme

court on the 2nd day of September, A. D. 1898, in accordance with the rules and practice of said court, and became and constituted a part of the record upon which said cause was heard, tried, and determined and upon which the same was argued and submitted in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the supreme court of the State of Minnesota, at the capitol of St. Paul, Minnesota, this 17th day of January, A. D. 1899.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE,
Clerk of Supreme Court, State of Minnesota.

16 Endorsed: 11314. State of Minnesota, in the supreme court. The State of Minnesota, respondent and plaintiff, vs. Paul J. Petit, appellant and defendant. Assignment of errors. Endorsed: Filed Jan'y 9, 1899. D. F. Reese, clerk.

17 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1898.

STATE OF MINNESOTA, Plaintiff,
vs.
PAUL J. PETIT, Defendant.

Before Hon. W. A. Kerr.

March 2nd, 1898, William McQuoid files complaint against defendant for keeping barber shop open on Sunday. On March 6th, 1898, warrant issued and returned. March 8th, 1898, 9 o'clock a. m., cause called. Defendant being in custody, and in open court, pleads not guilty. Whereupon cause continued to March 16th, 1898, 9 o'clock a. m., and defendant released on his personal recognizance until said time. March 16th, 1898, 9 o'clock a. m., cause called, defendant being in custody and — open court. Whereupon William McQuoid and J. L. Fawcette are sworn, and testify on behalf of the State. State rests. Defendant rests. Evidence closed. Defendant is adjudged guilty; where-

18 upon stay of sentence ordered until March 28th, 1898, 9 o'clock a. m., and cause continued to said time. March 28th, 1898, 9 o'clock a. m., cause called, defendant being in custody and in open court. Whereupon it is ordered that defendant pay a fine of ten dollars, and in default thereof, be imprisoned in the workhouse of the city of Minneapolis, until said fine is paid, not exceeding term of ten days; and stay of execution of sentence until April 7th, 1898, ordered and defendant released on his personal recognizance until said time. April 7th, 1898, cause continued to April 18th, 1898, 9 o'clock a. m. April 14, 1898, settled case. Notice of motion for new trial. Order denying new trial, and motion of appeal to supreme court filed. April 18th, 1898, stay extended to April 23rd, 1898. April 23rd, 1898, stay extended to May 3rd, 1898.

April 28th.—Bond in appeal to supreme court, and order for stay pending appeal filed.

A. S. ALLEN, *Clerk*,
By J. F. WHEATON, *Deputy*.

(Title of Cause.)

Notice of Motion for New Trial.

Please take notice that at the municipal court-rooms, in the court-house, in the city of Minneapolis, upon Wednesday, April 14th, 1898, at nine o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, at a special term of said court, then and there to be held, the defendant in this action, by and through his attorneys, the undersigned, will move the said court for a
19 new trial to be granted herein; said motion to be based upon the records and files in this action and upon the settled case to be then and there filed with the clerk of said court in this action. That said motion for a new trial will be made upon the following grounds, to wit:

1st. That the judgment and decision of said court, who tried this case, including his findings of fact and conclusions of law, are not justified by the evidence, and are contrary to law.

2nd. That said defendant was found guilty by the court contrary to law.

3d. That the complaint in this action does not charge the defendant with a crime under the laws of this State.

4th. That the evidence does not show the defendant to be guilty of any crime under the laws of this State.

5th. That the acts charged in the complaint do not constitute a crime or offense under the laws of this State.

6th. Section 6513 of the General Statutes of Minnesota, under which this charge is made, is unconstitutional and is repugnant to the fourteenth amendment to the Constitution of the United States.

7th. That section 6514 of the General Laws of the State of Minnesota, under which this charge is made, is unconstitutional in that it is repugnant to section 7, of article 1, of the constitution of the State of Minnesota.

Also on the ground that the statute in question, under which this charge is made, is an invasion of the reserved rights of this defendant under the Constitution and laws of the United States and of the State of Minnesota.

20 8th. Errors of law occurring at the trial and excepted to by the defendant.

BENTON & MOLYNEAUX,
Attorneys for Defendant, Nos. 302-304 New York Life Building, Minneapolis, Minnesota.

To H. D. Dickinson, Esq., attorney for State of Minnesota.

(Title of Cause.)

Order.

The motion for a new trial made by the defendant herein coming on for hearing, the State appeared by its attorney, H. D. Dickinson, Esq., and the defendant appeared by his attorneys, Messrs. Benton & Molyneaux.

After duly considering the matter, it is hereby ordered: that said motion be, and the same is denied.

Dated April 14th, 1898.

By the court:

W. A. KERR,
Judge of Municipal Court.

(Title of Cause.)

Notice of Appeal to Supreme Court.

Please take notice that the above-named defendant hereby appeals to the supreme court of the State of Minnesota from the order of the said municipal court, entered herein in the office of the clerk of said court on the fourteenth day of April, 1898, in favor
21 of the State of Minnesota and against the said defendant, denying defendant's motion for a new trial herein.

Dated April 14th, 1898.

BENTON & MOLYNEAUX,
Attorneys for Defendant, Nos. 302–304 New York Life Building, Minneapolis, Minnesota.

To H. D. Dickinson, Esq., attorney for State of Minnesota, and to Ed. Allen, clerk of said municipal court.

Due service of the within notice of appeal was made upon H. D. Dickinson, Esq., attorney for State of Minnesota, April 14th, 1898, and also upon clerk of said court.

Service of the within notice of appeal is hereby admitted, this 17th day of May, 1898.

H. W. CHILDS,
Attorney General.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Municipal Court, City of Minneapolis.

William McQuoid, being duly sworn, makes complaint to the above-named court, and says that on the 6th day of March, A. D. 1898, at the city of Minneapolis, in said county of Hennepin and State of Minnesota, Paul J. Petit then and there being, did wilfully, unlawfully, and wrongfully do and perform labor on said day which said day was then and there the first day of the week, commonly called Sunday, in that said Paul J. Petit did then and there keep

open a barber shop, for the purpose of cutting hair and shaving beards, at that certain barber shop known, designated, and described as number 600 Nicollet avenue, and did then and there in said barber shop wilfully, unlawfully, and wrongfully shave with a razor the face and beard of one John Doe, whose true name is to complainant unknown, which said labor so done as aforesaid was not then and there a work of necessity or charity, contrary to the statute in such case made and provided, and against the peace and dignity of the State of Minnesota.

Wherefore, complainant prays that said offender may be arrested and dealt with according to law.

W. McQUOID.

Sworn to and subscribed and complained of before me this 7th day of March, A. D. 1898.

H. MOORE,
Deputy Clerk of Municipal Court.

STATE OF MINNESOTA, }
County of Hennepin. }

Municipal Court, City of Minneapolis.

STATE OF MINNESOTA }
vs. }
PAUL J. PETIT, Defendant. }

The above-entitled cause came on for trial and was tried on the 16th day of March, A. D. 1898, before Hon. William A. Kerr, judge of said court, without a jury; H. D. Dickinson, Esq., appearing for the State and Messrs. Benton and Molyneaux appearing for the defendant, when the following proceedings were had:

WILLIAM McQUOID, after being first duly sworn, testified:

By Mr. DICKINSON:

Q. Do you live in this city, Mr. McQuoid?
A. Yes, sir.
Q. Where?
A. 3016 Hennepin avenue.
Q. What is your business?
A. I am a barber.
Q. Do you know the defendant, Mr. Paul J. Pettit?
A. I do.

Mr. MOLYNEAUX: I object to the introduction of any testimony, under this complaint, on the ground, first, that it does not charge a crime under the laws of the State of Minnesota; that the law under which the charge is brought is unconstitutional and void, both under the State constitution and the Constitution of the United States.

The COURT: Objection overruled.

Exception taken by defendant:

Q. What is his business, Mr. McQuoid?
A. He is a barber.
Q. Where is his place of business?
A. At the corner of Nicollet avenue and Sixth street—600 Nicollet avenue, I think is the number.
Q. What has he to do with that place?
A. He is the proprietor of that establishment run in his name.
Q. Is it a regular, ordinary barber shop?
A. Yes.
Q. Where is it run?
A. In the basement.
Q. In the basement?
A. Yes, sir.
Q. That is on the corner of Sixth street and Nicollet avenue here in this city?
A. Yes, sir.
Q. How large a place is it, Mr. McQuoid?
A. Mr. Petit runs five chairs; I believe there are six in the establishment.
Q. That is five barber chairs?
A. Yes.
Q. How many men are employed in the place?
A. He employs four men as barbers and two porters.
Q. Operating these different chairs?
A. Yes.
Q. The barber shop is run for what purpose?
24 A. For the purpose of cutting hair, shaving beards, trimming beards, shampooing hair and giving baths.
Q. Were you at that place on the 6th day of March, 1898?
A. I was.
Q. State what you saw there in regard to the place as to its being open or closed.
A. In that shop at the back end there is an alcove with curtains dividing it from the main part of the shop; during the week they are usually looped back and that is thrown open usually as the waiting-room for customers waiting their turn.
Q. Was the shop open or closed?
A. The shop was open.
Q. How many entrances?
A. One entrance.
Q. It was open, I understand?
A. It was open.
Q. How many men were engaged in there working in the shop?
A. One barber. The porters, of course, do their work on Sunday.
Q. Did you see the barber there?
A. I did.
Q. And the porters were there?
A. Yes, sir.
Q. Do you know their names?
A. I don't.
Q. Was Mr. Petit there?
A. Yes.

Q. What was the barber doing?

A. He was shaving a gentleman; Mr. Petit was the barber and not any of his men.

Q. Was there any of his barbers there beside Mr. Petit?

A. None of his barbers, no.

Q. He was there doing what?

A. Shaving a gentleman.

Q. Did you go in and have your work done?

A. I had no work done.

Q. Did you see him operate on more than one person?

A. I did not—only one.

25 Q. Who was with you?

A. Mr. J. L. Faussett, of this city.

Q. Did you see any others go in the place?

A. I did.

Q. Well, now state what you did see regarding other customers, if anything, or people about there.

A. There were several men in the shop that I didn't know. One man came in while I was there, I know him by sight, but I don't know his name; he was a bartender at the West hotel.

Q. What did he do?

A. He took his seat to wait until his turn for a shave.

Q. Was anything said to him?

A. I don't know whether he was greeted or not; I said "Good morning" to him myself.

Q. Were you in the place at that time?

A. Yes.

Q. Did you sit down?

A. No.

Q. Did you see anybody else go in or come out?

A. I did not.

Q. How long did you stay there?

A. Not more than three minutes.

Q. The gentleman whose name you have mentioned was in there with you?

A. Yes; he went in with me and came out with me.

Q. During this time the barber was only operating on one man?

A. That is all.

Q. Located in one of the barber chairs?

A. Yes, but it wasn't located where it is during the week.

Q. But it was in the same shop?

A. Yes.

Q. What time of the day was it?

A. It was about fifteen minutes after eleven, to the best of my recollection.

Q. In the forenoon?

A. In the forenoon.

Q. That was on Sunday?

A. Yes.

26 Q. The process consisted of what in the way of labor?

A. The process consisted of shaving the beard of a man with a razor.

Q. That consisted of what acts?
A. Drawing the razor over his face to take the beard off.
Q. And preparatory to that, what?
A. Preparatory to that he lathered the man's face and strapped his razor.
Q. And a subsequent washing, I suppose?
A. The subsequent washing, yes; I didn't see it.

Cross-examination.

By Mr. MOLYNEAUX:

Q. The door was locked when you went to him, was it not?
A. No, sir, it was open—unlocked.
Q. Who let you in?
A. I walked in.
Q. Did you open the door yourself?
A. I opened the door myself.
Q. Was the porter there to open it for you?
A. The porter was there, but he didn't open the door.
Q. Didn't the porter refuse you admittance?
A. No.
Q. What did he say to you?
A. He didn't speak to me on this occasion.
Q. You went in there twice that day, didn't you?
A. I was there a few minutes before that.
Q. How did you get in at that time?
A. I got in the same way.
Q. Did the porter open it for you?
A. No.
Q. What did he say to you at that time?

Mr. DICKINSON: Objected to as incompetent, irrelevant and immaterial.

The COURT: Objection sustained.

27 Mr. MOLYNEAUX: I wish to show that he asked to be shaved and the porter refused him and said they were not shaving.

The COURT: Objection overruled.

WITNESS: I asked the porter if Charles Ellers was in the shop; I stated to him in transacting a little business with Mr. Ellers, a few evenings before, I had mislaid a small pocketbook and thought I left it there; he said Mr. Eliers wasn't in the shop and I went out.

Q. How many chairs are there in that shop?
A. Six.
Q. Those chairs are usually run on week days, are they not?
A. Five of them are.
Q. Where are those chairs situated in the shop—in the outside main room, are they not?
A. Yes.

Q. There is a little room back of that curtain—cut off by a drop-curtain?
A. Yes, sir.
Q. Where was Paul Petit when you were there?
A. In this little room beyond the curtains.
Q. None of the other barbers were in there?
A. No.
Q. None of the chairs being run?
A. None of the chairs being run.
Q. Paul was back in this little room shaving a man?
A. Yes.
Q. The first time you went in there did you ask to be shaved?
A. I did not.
Q. You went in there for the purpose of seeing whether he was shaving anybody?
A. That was my object.

Redirect examination.

By Mr. DICKINSON:

Q. You said that a razor was used in this operation, did you not?
A. Yes.
28 Q. Of shaving?
A. Yes.
Q. What was the porter doing?
A. The first time I went in the shop the porter was shining a gentleman's shoes, and the second time one of them was cleaning a mirror. I don't know what the other one was doing.
Q. Were the porters engaged in cleaning the shop?
A. Yes.
Q. This door is adjacent to the street, being reached by a stairway coming down from the sidewalk?
A. Yes.

Recross-examination:

By Mr. MOLYNEAUX:

Q. Why did you ask for Charlie Ellers?
A. Mr.——

Mr. DICKINSON: Objected to as incompetent, irrelevant, and immaterial.
The COURT: Objection sustained.

Redirect examination.

By Mr. DICKINSON:

Q. Are you connected with any association at all?
A. I am——

Mr. MOLYNEAUX: Objected to as immaterial.
The COURT: Objection sustained.

J. L. FAUSSETT, after being first duly sworn, testified.

By Mr. DICKINSON:

Q. What is your business, Mr. Faussett?
A. I am a barber.
Q. Are you a resident of this city?
A. Yes, sir.
Q. How long have you lived here?
A. About eight years.
29 Q. Do you know Mr. Petit, the defendant?
A. I do.
Q. Know where his place of business is?
A. I do.
Q. Where?
A. Sixth street and Nicollet avenue.
Q. Number six hundred?
A. I don't know what the number is.
Q. What part of the place?
A. It is in the basement.
Q. And what is it?
A. It is a barber shop.
Q. Consisting of what?
A. Barber shop and bath-rooms.
Q. Chairs—barber chairs?
A. Yes; and sitting chairs.
Q. Mirrors in front of them?
A. Mirrors in front of them.
Q. Were you there on the 6th day of March, 1898?
A. Was that on a Sunday?
Q. I am asking you.

Mr. MOLINEAUX: We will concede it was Sunday.

Q. It was on Sunday you were there?
A. Yes, sir.
Q. Were you there with this gentleman?
A. Yes, sir.
Q. The first part of March, some time?
A. Yes, sir.
Q. What time of the day?
A. Well, I should judge it was about eleven o'clock.
Q. What did you see there? What did you do first?
A. I went down with Mr. McQuoid into the barber shop and went out again.
Q. You went into the barber shop?
A. Yes, sir.
Q. Was the door to the shop open or closed?
A. It was closed.
30 Q. Locked or unlocked?
A. Unlocked.
Q. Was the shop closed or open for business?

A. Well, that would be hard to say; I didn't see anybody working except Mr. Petit.
Q. Well, did you see anybody else working there?
A. I saw some porters working there.
Q. Well, they are the ones usually employed in the shop when it is open?
A. Yes, sir.
Q. What were they doing?
A. When I first went down they were shining shoes.
Q. For who?
A. I don't know the gentleman.
Q. You don't know whether they were customers of the place or not?
A. I don't.
Q. What was Mr. Petit doing?
A. He was shaving a man.
Q. How long was that from the first time?
A. A space of perhaps ten minutes.
Q. You didn't see Mr. Petit there the first time?
A. No, sir.
Q. He was there the second time?
A. Yes, sir.
Q. Shaving a man's face?
A. Yes, sir.
Q. With a razor?
A. Yes, sir.
Q. Sitting in what portion of the shop?
A. In the little room back.
Q. In what kind of an apparatus?
A. In a barber chair.
Q. Before a mirror?
A. I didn't see no mirror.
Q. What were the porters doing the second time you were in there?
A. One of them was cleaning a looking-glass.
Q. Did you see any other customers come in?
A. I saw one gentleman; I don't know whether he was a customer or not.
31 Q. Did he come in while you were in there?
A. Yes, sir.
Q. What did he do?
A. I didn't pay any attention to what he did, I was a little excited after catching Mr. Petit.
Q. What did he do?
A. He walked by me.
Q. Do you know whether he was one of the customers or not?
A. No.
Q. You don't know whether he took off his coat or not?
A. No.
Q. Did Mr. Petit say anything to him?
A. I don't know, I didn't hear him.

Q. You didn't hear him say "next" or anything of that kind?
A. No, sir.

Cross-examination.

By Mr. MOLYNEAUX:

Q. You went in with Mr. McQuoid?
A. Yes, sir.
Q. Did the porter stop you the first time you went in?
A. No, sir.
Q. What did he say to you?
A. He didn't say anything to me.
Q. What did you say to him?
A. I didn't say anything to him.
Q. What time was this that you went in?
A. I should judge about eleven o'clock.
Q. No barbers in the shop the first time you went in?
A. No.
Q. None at all?
A. No.
Q. The porters were working around in there?
A. Yes.
Q. Cleaning mirrors?
A. No, they were shining shoes.
Q. The second time cleaning mirrors?
A. Yes.
32 Q. The second time you went, Paul Petit was in there in the back part of the shop shaving a man?
A. Yes, sir.

Mr. DICKINSON: State rests.

Mr. MOLYNEAUX: Defendant rests and moves that the case be dismissed.

Mr. MOLYNEAUX: I move the court that the defendant be discharged and this action be dismissed on the following grounds:

First. That the complaint does not charge the defendant with the crime under the laws of this State.

Second. That the evidence does not show the defendant to be guilty of any crime under the laws of this State.

Third. For the reason that the acts charged in the complaint do not constitute a crime or offense under the laws of this State.

Fourth. That section 6513 of the General Statutes of Minnesota, under which this charge is made, is unconstitutional and is repugnant to the 14th amendment of the Constitution of the United States.

Fifth. That said section 6513 of the general laws of the State of Minnesota, under which this charge is made, is unconstitutional in that it is repugnant to section 7 of article one of the constitution of this State; also on the ground that the statute in question, under which this charge is made, is an invasion of the reserved rights of this defendant under the Constitution and laws of the United States and the State of Minnesota.

By the COURT: Motion denied.

33 Mr. MOLYNEAUX: The defendant excepts to the ruling of the court.

By the COURT: I find the defendant guilty as charged in the complaint.

Mr. DICKINSON: I move the court that the defendant be sentenced.

The COURT: It is ordered that the defendant pay a fine of ten dollars, and in default thereof be imprisoned in the workhouse of the city of Minneapolis until said fine is paid, not exceeding the term of ten days.

The above judgment is duly entered upon the records of said court in the office of the clerk of said court.

Proceedings under said judgment stayed for the purposes of appeal to the supreme court.

It is hereby stipulated by and between the respective parties herein, through their respective attorneys, that the foregoing settlement of case is true and correct, and contains all of the evidence produced on the trial of the case and the objections and exceptions made and taken to the same, and all of the proceedings had on the trial of the same, and, it is hereby stipulated, may be allowed by the court as the settled case.

H. D. DICKINSON,
Attorney for Plaintiff.
BENTON & MOLYNEAUX,
Attorney- for Defendant.

I hereby certify that I have examined the foregoing settlement of case and find that it is true and correct; that it contains all of the evidence produced in the trial of the case, and of the ob-
34 jections and exceptions made and taken on the same, and all of the proceedings had on the trial of the same, and the same is hereby allowed as the settled case herein.

Dated April 2nd, 1898.

W. A. KERR, *Judge.*

35 11314.

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1898.

STATE OF MINNESOTA, Respondent,
vs.
PAUL J. PETIT, Appellant. } No. 14. Syllabus.

The State may, as a police regulation, for the promotion of the physical, mental, and moral welfare of its citizens, establish, as a civil and political institution, the first day of the week as a day of rest and prohibit the performance upon it of all labor or business except works of necessity or charity.

Gen. St. 1894, sec. 6513, is not obnoxious to the objection of being "class legislation," because it declares that, as a matter of law, keeping open a barber shop on Sunday for the purpose of hair-cutting

and shaving is not a work of necessity or charity, while as to other kinds of labor or business it leaves that question to be determined as one of fact.

Judgment affirmed.

36 11314.

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1898.

STATE OF MINNESOTA, Respondent,
vs.
PAUL J. PETIT, Appellant. } No. 14. Opinion.

The defendant was tried and convicted of keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards, contrary to the provisions of Gen. St. 1894, sec. 6513, which reads as follows:

"All labor on Sunday is prohibited excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for good order, health or comfort of the community; provided however that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity."

The only question is as to the constitutionality of this act, which is assailed by the defendant on two grounds: 1st, that the whole act is invalid, it not being within the police power of the State to prohibit any kind of labor or business on Sunday which does not interfere with the peace and good order of the community, and, 2nd, and mainly, that, in view of the proviso, the act is invalid as being "class legislation."

I. We shall not spend much time on the first point. It has been decided in this State, in accordance with an almost unbroken line of authorities elsewhere, that the legislature may, in the exercise of the police power of the State, establish by law, as a civil and
37 political institution, the first day of the week as a day of rest, and may prohibit upon it the performance of any manner of labor, business, or work except only works of necessity or charity. State *v.* Ludwig, 21 Minn., 202. So-called Sunday legislation has with many persons, and occasionally even with courts, been the subject of adverse criticism as an unwarranted interference with that freedom of religious belief and practice which is guaranteed to every man by the Constitution. These criticisms proceed upon an entirely erroneous theory as to the object of such legislation. In some States it has been held that Christianity is part of the common law of this country, and Sunday legislation is upheld, in whole or in part, upon that ground.

Even if permissible, it is not necessary to resort to any such reason to sustain such legislation. The ground upon which such legislation is generally upheld is that it is a sanitary measure, and as such a legitimate exercise of the police power.

It proceeds upon the theory, entertained by most of those who have

investigated the subject, that the physical, intellectual, and moral welfare of mankind requires a periodical day of rest from labor, and as some particular day must be fixed, the one most naturally selected is that which is regarded as sacred by the greatest number of citizens, and which by custom is generally devoted to religious worship or rest and recreation, as this causes the least interference with business or existing customs. It is sometimes said that mankind will seek cessation of labor at proper times by the natural influences of the law of self-preservation; also that if a man desires to engage on Sunday in any kind of work or business which does not interfere with the rights of others he has an absolute right to do so, and to choose his own time of rest as he sees fit. The answer to this is that all men are not in fact independent and at liberty to
38 work when they choose. Labor is in a great degree dependent upon capital, and unless the exercise of power which capital affords is restrained, those who are obliged to labor will not possess the freedom for rest which they would otherwise exercise. The object of the law is not so much to protect those who can rest at pleasure, but to affords rest to those who need it and who from the conditions of society could not otherwise obtain it. Moreover, if the law was not obligatory upon all, and those who desired to do so were permitted to engage in their usual avocation on Sunday, others engaged in the same kind of labor or business might, against their wishes, be compelled by the laws of competition in business to do likewise. See dissenting opinion of Justice Field in *Ex parte* Newman, 9 Cal., 502, afterwards adopted as the views of the court in *Ex parte* Andrews, 18 Cal., 685.

II. The enacting clause of the statute under which defendant was convicted was passed in 1885, being section 225 of the Penal Code. The proviso was added in 1887. Laws 1887, ch. 54.

If keeping a barber shop open on Sunday for the purposes of shaving and hair-cutting was not a work of necessity or charity within the meaning of the original statute, the amendment has not changed the law, and the statute as it now stands is not open to the objection of being class legislation. Under the original statute what were works of necessity or charity was largely left to be decided as a question of fact, which would often be a question for the jury. The effect of the amendment was to make this a question of law instead of fact, as to keeping a barber shop open.

In the exercise of the police power in establishing a day of rest a very large discretion must be allowed to the legislature in determining what kinds of labor or business should be prohibited and what are and what are not works of necessity or charity, and unless their classification is manifestly purely arbitrary, and not
39 founded upon any substantial distinction or apparent natural reason which suggest the necessity or propriety of different legislation, the courts have no right to interfere with the exercise of legislative discretion. Courts will take judicial notice of the fact that, in view of the custom to keep barber shops open in the evening as well as in the day, the employés in them work more and during later hours than those engaged in most other occupations,

and that this is especially true on Saturday afternoons and evenings; also that, owing to the habit of so many men to postpone getting shaved until Sunday, if such shops were to be permitted to be kept open on Sunday, the employés would ordinarily be deprived of rest during half of that day. In view of all these facts, we cannot say that the legislature has exceeded the limits of its legislative police power in declaring that, as a matter of law, keeping barber shops open on Sunday is not a work of necessity or charity, while as to all other kinds of labor they have left that question to be determined as one of fact.

It will be noted that what the law forbids is not a man's shaving himself, or even getting some one else to shave him, but the keeping open a barber shop for that purpose on Sunday.

The object of the law was not to interfere with those who wish to be shaved on Sunday, or primarily to protect the proprietors of barber shops, but mainly to protect the employés in them by insuring them a day of rest.

We are of opinion that the whole act, including the proviso, is valid.

Judgment affirmed.

MITCHELL, *J.*

I dissent.

BUCK, *J.*

40 [Endorsed:] No. 11314. State of Minnesota, supreme court. State of Minnesota, respondent, *vs.* Paul J. Petit, appellant. Copy of opinion and syllabus. Original. Filed Dec. 2, 1898. D. F. Reese, clerk. October term, A. D. 1898. Mitchell, J.

41 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1898.

STATE OF MINNESOTA, Respondent,
vs.
PAUL J. PETIT, Appellant. } No. 14.

Pursuant to an order of court duly made and entered in this cause on the ninth day of January, A. D. 1899, it is here and hereby determined and adjudged that the judgment of the court below herein appealed from, to wit, of the municipal court of the city of Minneapolis, sitting within and for the county of Hennepin, be, and the same hereby is, in all things affirmed.

Dated and signed this ninth day of January, 1899.

By the court:

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

42 [Endorsed:] 11314. State of Minnesota, supreme court. Transcript of judgment. Filed January 9, A. D. 1899. D. F. Reese, clerk.

STATE OF MINNESOTA, } ss:
Supreme Court, }

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this ninth day of January, A. D. 1899.

D. F. REESE, *Clerk.*

43 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1898.

STATE OF MINNESOTA, Respondent, } No. 14. Appeal from
vs. Municipal Court.
PAUL J. PETIT, Appellant. }

CITY OF MINNEAPOLIS, }
County of Hennepin. }

This cause having been duly argued and submitted at the general October term of this court, A. D. 1898, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below herein appealed from be, and the same hereby is, in all things affirmed, and that the respondent above named have judgment accordingly.

Entered January 9th, A. D. 1899.

By the court:

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: D. F. REESE, *Clerk,*
By J. L. HELM, *Deputy.*

44 [Endorsed:] No. 11314. State of Minnesota, supreme court. Copy of order for judgment. Filed January 9, A. D. 1899. D. F. Reese, clerk.

45 STATE OF MINNESOTA:

Supreme Court, General October Term, A. D. 1898.

FRIDAY MORNING, 9.30 O'CLOCK, *November 11th, A. D.* 1898.

Court convened pursuant to adjournment, all the justices being present.

STATE OF MINNESOTA, Respondent,
vs.
PAUL J. PETIT, Appellant. } Cal. No., 14; Reg. No., 11314.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was submitted to the court for decision upon paper book and briefs of counsel and taken under advisement.

A true record.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

46 [Endorsed:] State of Minnesota, supreme court. State of Minn., respondent, *vs.* Paul J. Petit, appellant. Copy of minutes of argument. Filed Jan. 9, A. D. 1899. D. F. Reese, clerk.

47 [Endorsed:] No. 11314. State of Minnesota, supreme court. State of Minnesota, respondent, against Paul J. Petit, appellant. Judgment-roll. Filed January 9, 1899. D. F. Reese, clerk.

48 STATE OF MINNESOTA:

Supreme Court.

STATE OF MINNESOTA,
Office of Clerk of Supreme Court, } *ss:*

[Ten-cent U. S. internal-revenue stamp, canceled 1, 9, '99. D. F. R.]

I, Darius F. Reese, clerk of the supreme court, State of Minnesota, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record, judgment, judgment-roll, and all of the proceedings had in the said supreme court of the State of Minnesota in the case between The State of Minnesota, respondent, and Paul J. Petit, appellant, including the opinion of the said supreme court therein, as appears from the original files and records; and I do further certify and return that I have annexed to said transcript and included therewith and that the foregoing are copies of the petition for writ of error, with allowance of same, and of the

assignments of error, and of the bond, as the same remain on file and of record in said supreme court of the State of Minnesota, and are the original writ of error from the Supreme Court of the United States and the original citation issued thereon, with proof of service thereof, and that the foregoing constitutes a true, full, and complete return to said writ of error.

Seal of the Supreme Court, State of Minnesota.

In witness whereof I have hereunto set my hand and the seal of said supreme court of the State of Minnesota, at the capitol, at St. Paul, Minnesota, this 9th day of January, A. D. 1899.

DARIUS F. REESE,
Clerk of the Supreme Court, Minnesota.

Endorsed on cover: File No., 17,273. Minnesota supreme court. Term No., 194. Paul J. Petit, plaintiff in error, *vs.* The State of Minnesota. Filed January 21, 1899.

No. 194.

Brief of Counsel for Pl'ff in Error.

Filed Dec 27 1892.

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 194.

PAUL J. PETIT, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE UNITED STATES.

Brief for Plaintiff in Error.

17-76

17373

Supreme Court of the United States.

October Term, 1899.

PAUL J. PETIT,

Plaintiff in Error,

vs.

STATE OF MINNESOTA,

Defendant in Error.

BRIEF FOR APPELLANT IN ERROR.

STATEMENT OF CASE.

In March, 1898, plaintiff in error was arrested charged with keeping open a barber shop on Sunday under Section 6513, Title 10, of the Statutes of Minnesota, which reads as follows:

"All labor on Sunday is prohibited except the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for good order, health or comfort of the community; provided, however, that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity."

The complaint under which the plaintiff in error was arrested, charged that "The defendant did wilfully, unlawfully and wrongfully do and perform labor on said day, March 6th, 1898, which said day was then and there the first day of the week, commonly called 'Sunday,' in that said Paul J. Petit did then and there keep open a barber shop for the purpose of cutting hair and shaving beards at that certain shop, known, designated and described as number 600 Nicollet avenue, and did then and there in said barber shop wilfully and wrongfully shave with a razor the face and beard of one John Doe."

The case was tried before the municipal court of the city of Minneapolis without a jury; the plaintiff there objected to the introduction of any testimony under the complaint on the ground,

First: That it does not charge a crime under the laws of the state of Minnesota; that the law under which the charge is brought is uncon-

stitutional and void, both under the said constitution and the 14th amendment of the constitution of the United States. The objection was overruled and exception taken by the defendant. See transcript of record, p. 11, Fol. 23.

The evidence shows that Paul J. Petit, the owner of the shop, was shaving a man and no other barber was present or working.

When the evidence was all in and both parties had rested, the defendant below moved that he be discharged and the action be dismissed, on the following grounds:

1st. That the complaint does not charge the defendant with a crime under the laws of this state.

2nd. That the evidence does not show the defendant to be guilty of any crime under the laws of this state.

3rd. For the reason that the acts charged in the complaint do not constitute a crime or offense under the laws of this state.

4th. That section 6513, of the General Statutes of Minnesota, under which this charge is made, is unconstitutional and is repugnant to the 14th amendment of the constitution of the United States.

5th. That said section 6513, of the General Laws of the state of Minnesota, under which this charge is made, is unconstitutional in that it is repugnant to section 7, article 1, of the constitution of this state; also on the ground that the statute in question, under which this charge is made, is an invasion of the reserved rights of this defendant under the constitution and laws of the United States and of the state of Minnesota.

The motion was denied and defendant excepted. See transcript of record, p. 18, Fols. 32 and 33.

The defendant was found guilty and was sentenced and fined by the lower court to pay a fine of ten dollars ($10.00).

The defendant thereupon made a motion for a new trial in said court, which motion was denied. See transcript of record, pp. 9 and 10.

The plaintiff in error at once effected an appeal to the supreme court of the state of Minnesota, which court affirmed the order and judgment of the municipal court. See judgment in supreme court transcript of record, p. 22, Fol. 41.

Said judgment, affirming the lower court, was entered January 9th, 1899, in the supreme court of the state of Minnesota, and a writ of error

was immediately and duly applied for to Charles M. Start, chief justice of the supreme court of Minnesota, and was by him duly allowed, and an appeal was duly effected to this court, and the records were transmitted.

SPECIFICATIONS OF ERROR.

I.

The court erred in holding to be constitutional that part of section 6513, of the statutes of Minnesota for 1894, which reads as follows: "Provided, however that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity."

II.

The court erred in holding that said provision of the statutes of Minnesota, mentioned in specification 1, is not repugnant to the 14th amendment of the constitution of the United States.

III.

The court erred in holding that said provision of the statute, mentioned in specification 1, is not an invasion of the reserved rights of the plaintiff in error, under the constitution and laws of the United States, and that provision of the constitution of the United States which reads as follows: "Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws."

IV.

The court erred in finding the said plaintiff in error guilty of the charge made against him under the complaint.

V.

The court erred in sentencing the said defendant, as appears by the record herein.

VI.

The court erred in refusing defendant a new trial and denying defendant's motion therefor. See transcript of record, p. 10, Fol. 20.

BRIEF OF THE ARGUMENT.

I.

Any legislation which is not general in its scope and which affects only one class or body of citizens is in conflict with the spirit of this Government, and the 14th amendment of the Constitution of the United States; unless such class or body of citizens are classified upon some apparent, natural reason, some reasons suggested by necessity, by such a difference in the situation and circumstances of the subjects placed in a different class as suggests the necessity or propriety of different legislation with respect to them.

Johnson vs. St. Paul & Duluth R. R., 43 Minn. 222.
Nichols vs. Walter, 37 Minn. 264.
Lavalle vs. St. Paul, Minneapolis & Manitoba R. R. Co., 40 Minn. 249.
Eden vs. People, 161 Ill. 296; 32 L. R. A. 659.
Ex parte Leo Jentzsch, 32 L. R. A., p. 664. (Cal.)
City of Tacoma vs. Kreck (Wash.), 46 Pac. Rep., 255.
State vs. Granneman, 32 S. W. Rep., p. 788.
Calder vs. Bull, 3 Dallas 386.
U. S. Constitution, 14th Amendment.
Ritchie vs. The People, 155 Ill. 98.
In re Jacobs, 98 N. Y. 98.
Low vs. Rees Printing Co., 41 Neb. 127.
Ex Parte Westerfield, 55 Cal. 550.
Butchers' Union Co. vs. Crescent Cy. Co., Ill., U. S. 746.
Millett vs. The People, 117 Ill. 294.
Frorer vs. The People, 141 Ill. 171.
Ramsey vs. The People, 142 Ill. 380.
Coal Co. vs. The People, 147 Ill. 66.
People vs. Gilson, 109 N. Y. 389.
State vs. Goodwill, 33 W. Va. 179.
State vs. Loomis, 115 Mo. 307.
R. R. Co. vs. Jacksonville, 67 Ill. 37.
Cooley's Con. Lim., p. 393.
Atchison R. R. Co. vs. Baty, 6 Neb. 37.
Godcharles vs. Wigeman, 113 Pa. St. 431.

II.

Where the ostensible object of an enactment is to secure the public comfort, welfare, or safety, it must appear to be adapted to that end; it cannot invade the rights of person and property under the guise of a police regulation when it is not such in fact.

Eden vs. People, 161 Ill. 296; 32 L. R. A. 659.
Ex Parte Leo Jentzsch, 32 L. R. A., p. 664.
Ritchie vs. The People, 155 Ill. 98.
Lakeview vs. Rose Hill Cemetery Co., 70 Ill. 191.

III.

People vs. Gilson, 109 N. Y. 389.
Millett vs. The People, 117 Ill. 296.
Calder vs. Bull, 3 Dallas 386.
In re Jacobs, 98 N. Y. 109.

The barber is deprived of property without due process of law by a statute making it unlawful for him to do business on Sunday, while it does not apply to any other class of business, and such a statute is unconstitutional as especially unjust and unreasonable, working an invasion of individual liberty, since it is based upon no distinction to justify singling out that class of laborers.

Wm. S. Eden, plaintiff in error, vs. People of the State of Illinois, 161 Ill. 296; 32 L. R. A. 659; ex parte Leo Jentzsch, 32 L. R. A. 664.

IV.

The law herein contested is unconstitutional.

Eden vs. People, 161 Ill. 296; 32 L. R. A. 659.
People vs. Hanover, 149 N. Y. 195; 31 L. R. A., 689. (Dissenting opinions.)
R. R. Co. vs. Jacksonville, 67 Ill. 37.
Ex parte Leo Jentzsch, 32 L. R. A. 664.
City of Tacoma vs. Kreck (Wash.), 46 Pac. Rep. 255. (Sept. 28, 1896.)
State vs. Granneman, 33 S. W. Rep. p. 787 (Jan. 21, 1896).

ARGUMENT.

The enacting clause of the statute under which defendant was convicted was passed by the legislature of the state of Minnesota in 1885, being Sec. 225 of the Penal Code, and reads as follows:

"All labor on Sunday is prohibited, excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community."

Penal Code of Minnesota, 1885, Sec. 225.

On March 7, 1887, this law was amended by adding to it the following words:

"Provided, however, that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards, shall not be deemed a work of necessity or charity."

Laws of Minnesota for the year 1887, Chapter 54. See 1884, Statutes of Minnesota, Sec. 6513, title 10.

It is contended by the plaintiff in error that the statute as it stood before the proviso was added, did not prohibit barbering on Sunday, but that barbering was an act of necessity within the statute.

It seems too palpable for argument that shaving and keeping open a barber shop on Sunday for that purpose would be included among the things needful to the comfort and good order of the community.

The quiet observance of Sunday is the stated object of the statute, and we apprehend that the observance of Sunday is enjoined by the law by virtue of the inherent police power lodged in the legislature, as a sanitary and moral regulation. Cessation from work on Sunday is the rule, and the natural inclination of the people. But not everything can stop. There is necessity for some acts and some labor to be performed upon that day, both by the spirit of the times and the demands of civilization. Railroad trains, cable and electric cars have to run, if, for no other reason, than to carry people to the places of worship. Domestic servants have to cook; it is as necessary to eat on Sunday as on other days; grocers, butchers and milkmen have to serve their customers; newspapers have to be printed and sold and restaurants, drug stores and barber shops are necessities on that day and come within the definition of the statute as "needful to the comfort, good order or health of the community." At least the public demand, if left to itself to answer the question, without legislative interference, has demonstrated such to be the fact. Thousands of men have not acquired the art of shaving themselves, and from habits of cleanliness daily submit themselves to the hands of their barbers, and to shave on Sunday is absolutely necessary to the comfort, to the convenience, and to the cleanliness of this large class of men; and it is a shock to decency and intelligence that at this advanced day of civilization, of religious liberty and independence of thought, that an American citizen is compelled to appeal to the supreme court of the land to vindicate his right to be clean on Sunday, and to defend himself against this petty attack upon

his natural liberty. Men seek the grateful quiet of the barber shop on Sunday, and there have the barber perform their toilet, and render them presentable for the day, and surely it cannot be more reprehensible to repair to your barber to be shaved on Sunday than to take a bath at home or shave yourself. We contend that there is a limit to the police power of the state, and that it does not extend so far as to prohibit "works of necessity or charity."

It is conceded that the legislature of a state may prohibit all business on Sunday, excepting "works of necessity and charity", and that such a law would violate none of the constitutional provisions relied upon here. We contend that as the acts stood before the proviso of 1887 was added to it, barbering on Sunday was not a violation of the Sunday law, nor any law of the state, but that it was included in those acts which are "needful" during the day for "the good order, health and comfort of the community". We condemn the proviso added to the statute by the act of March 7, 1887, selecting barbers from all classes of people and passing a law prohibiting them from barbering, and contest and deny the constitutionality of the statute, *on the ground that it is class legislation and an unwarrantable extension of the police power.*

It is contended here that by the act in question that part of the 14th amendment to the United States Constitution, (Section 1), has been violated, which reads as follows:

"Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws."

I.

Any legislation which is not general in its scope and which affects only one class or body of citizens is in conflict with the spirit of this government, and the 14th amendment of the Constitution of the United States; unless such class or body of citizens are classified upon some apparent natural reason, some reasons suggested by necessity, by such a difference in the situation and circumstances of the subjects placed in the different class as suggests a necessity, or propriety of different legislation with respect to them.

Without considering the power of the legislature which is unquestionable, by virtue of its police laws, to prescribe by general law, a period of rest in each week from secular employments, with such exceptions as necessity compels, it seems to us that the amendment of 1887, under discussion, is class legislation. The general law, according to Sec. 222, Chap. 1, of the Penal Code, purports to be passed to prohibit certain acts which are "serious interruptions of the repose and religious liberty of the community." We do not question the general law which prohibits all labor excepting "works of necessity and charity," we only contend that this general law as it stood before the amendment, did not interfere with barbering, which was a "work of necessity." But the proviso which is added to the statute by the amendment attempts a radical change and proceeds to select certain persons, those engaged in barbering, and prohibit them from doing certain acts, namely: keeping open a barber shop for the purpose of shaving beards, etc. For reasons of its own, if any there were, our legislature has singled out that peaceable and most respectable and law-abiding class of citizens, known as barbers, and named them specifically, and told them that they alone must not keep open their shops on Sunday, though their work comes within the class defined by the statute as "works of necessity," and though such work is, of itself, without being so defined by the legislature, a "work of necessity." Is such an attempt as this class legislation? For, if it is, by the universal decisions of this country, which are cited in the first part of this brief, such enactments have been denounced as vicious, unconstitutional and void as a denial of the equal protection of the laws. The law has received, of late years, a remarkable impetus in the direction of recognizing, defending and enforcing the principle here contended for.

As was said by the supreme court of Nebraska, in Low vs. Rees Printing Co., 41 Neb. p. 135:

"For some reason, not necessary to consider, there has in modern times arisen a sentiment favorable to paternalism in matters of legislation. And further to the fact that these attempts have recently been so frequently made, we are indebted for a number of well considered adjudications bearing upon the question now presented for our consideration."

In that case the legislature enacted that for all classes of mechanics, servants and laborers, excepting only those engaged in farm and domestic labor, a day's work should not exceed eight hours. Because

of this exception, and because the legislation was not absolutely universal, affecting all classes of labor alike, the act was declared unconstitutional as denying the equal protection of laws.

In this line of argument it may be asked if all classes, with but two exceptions, cannot be restricted, how can a law restricting but one class, all other classes being excepted, hope to stand the test of the constitutional safeguard.

In Ex Parte Westerfield (55 Cal. 550), where the legislature undertook to make it a misdemeanor for any person to engage in the business of baking, for the purpose of sale, between the hours of six o'clock p. m. on Saturday and six o'clock p. m. on Sunday, the court declared the law unconstitutional, and said, per Merrick, judge:

"The act purports to be an act to provide for a day of rest. Instead of pursuing that intent, it goes on to say that certain acts, namely, the labor of baking for the purpose of sale, if performed by certain persons, namely, those engaged in the business of baking for the purpose of sale, shall constitute a crime, and shall be punished. This is special legislation. A certain class is selected * * * Even if there be authority to restrain labor on Sunday, it must be under a general law restraining labor on that day."

In the same case, Judge McKinstry, delivering a concurring opinion, said:

"A general law must include within its sanction all who come within its purpose and scope. It must be as broad as its object. If it is to be made a crime not to refrain from labor a whole or a part of any given day of the week, it must be made equally a crime as to all persons who do not so refrain, or the prohibitory law must be made applicable to all of a class, the members of which for reasons apparent upon mention of the class, may at least require, for the benefit of their health or morals, a period of rest not beneficial to any other class or individual. We might, perhaps, take notice that there are controlling reasons why clergymen should not be prohibited from pursuing their pious labors on the Christian Sabbath, and that the law might be general, which included all others, although it excluded them. So, we might, perhaps, hold that there are other special classes who might be permitted to pursue their avocations, notwithstanding the law which prohibited labor by the rest of the community, because of the fact that their peculiar pursuits involved "works of necessity," and placed them beyond the benefit of the law which would compel and enforce cessation of labor by others. But there can be no rule which will permit the prohibition of a particular kind of labor, in itself innocent and beneficial to the public. There is no reason why bakers should be forced to rest from their labors periodically, which is not applicable to many other classes of artisans and workmen. To say that every law is general within the meaning of the constitution, which bears equally upon all to whom it is applicable, is to say there can be no special laws."

Ex Parte Westerfield, 55 Cal. 550.

It may be urged, in reply, that this is not class legislation, because it treats all who engage in the barber business alike. The answer to this is well put by the supreme court of the state of Minnesota, in

Jordan vs. St. Paul & Duluth R. R. Co., 43 Minn. 223,

which says:

"Neither would it relieve the act from the imputation of class legislation, that it applied alike to all railroads. It has been sometimes loosely stated that special legislation is not class legislation if all persons brought under its influence are treated alike under the same conditions. But this is only half a truth. Not only must it treat alike, under the same conditions, all who are brought within its influence, but in its classification it must bring within its influence all who are under the same conditions. Therefore, if a distinction is made between railroad corporations and other employers, as respects their liability to their employes, it must be based upon some difference in the nature of the employment, and can only extend to cases where such differences exist."

There is no difference between the labor performed by a barber, and every other class of labor, in any degree which can avail to distinguish them as a body peculiar unto themselves, requiring legislative protection. If their labor requires them to be on their feet a greater part of the time, so does that of a sales girl, or a motoneer or conductor on a street car, and many other classes of labor, in a far greater degree. And even though some peculiar condition appertaining to barbers alone might exist, the record does not disclose it; it has not been brought to the attention of the court, and certainly it is not a condition of which the court could take judicial notice.

In the opinion written in the case at bar, by the supreme court of Minnesota, the court states that it,

"Will take judicial notice of the fact that, in view of the custom to keep barber shops open in the evening as well as in the day, the employes in them work more and during later hours than thos engaged in most other occupations, and that this is especially true on Saturday afternoons and evenings; also that, owing to the habit of so many men to postpone getting shaved until Sunday, if such shops were to be permitted to be kept open on Sunday, the employes would ordinarily be deprived of rest during half of that day."

We think that the court cannot assume such to be the fact. The labor of barber is not more onerous, and not nearly so much so as many other kinds of labor which may be thought of without mention. And it would be a wide stretch of the rule to take judicial notice of something that does not exist. There are many other kinds of labor

which require longer and later hours and more arduous work than that of the barber; and there is no real and valid distinction here by which we may distinguish the barber from all other classes of labor upon which to base a special law selecting him out and protecting him alone. If such is the case then might a legislature single out servant girls and pass a special law prohibiting them from laboring on Sunday; so also might they single out motormen, working on street cars, conductors, railroad employes, and thousands of others that we might mention who work longer and harder than barbers.

Again our supreme court in its opinion states:

"Labor is in a great degree dependent upon capital, and unless the exercise of power which capital affords is restrained, those who are obliged to labor will not possess the freedom for rest which they would otherwise exercise."

We may answer to this that a law may be passed prohibiting all labor on Sunday excepting "works of necessity and charity", and that it cannot be permitted to select out certain classes of men, for instance, railroad employes or servant girls, or blacksmiths, or motormen, or barbers, and pass a special law as to each one of these classes, prohibiting them from laboring on Sunday. Sunday is fully protected and labor is fully protected when a general law is passed prohibiting all labor on Sunday, excepting "works of necessity and charity."

The supreme court of Minnesota in its opinion in this case says:

"Under the original statute what were works of necessity or charity was largely left to be decided as a question of fact, which would often be a question for the jury; the effect of the amendment was to make this a question of law instead of fact, as to keeping a barber shop open."

If the question was one of fact for the jury under the law as it stood before the proviso was added, as is here assumed by the court, the effect of the proviso would be the same as an independent law such as the California or Illinois law; in either event the effect would be to make it not a question of law, as to whether or not it be a work of necessity, but to absolutely prohibit the work. If it is illegal in one form, it is illegal in the other, and if a law in the form of the California or Illinois law is class legislation, so would the same law be class legislation if added as a proviso to the general law. Each of the states which have held the barber closing law unconstitutional had upon its statute books at the same time, statutes similar to our general statute prohibit-

ing labor and work on Sunday excepting "works of necessity or charity."

The supreme court of this state in attempting to justify the law as a protection to labor seems to forget that this may be done by a general law, and, as was said by the supreme court of California in the case of Ex Parte Leo Jentzsch, 32 L. R. A. p. 664:

"How comes it that the legislative eye was so keen to discern the needs of the oppressed barber, and yet was blind to his toiling brethren in other vocations?"

If a general law is sufficient for all other vocations, how is it that the barber alone needs a special law.

Again the supreme court of California says:

"It is not easy to see where or how this law protects labor from the unjust exactions of capital. A man's constitutional liberty means more than has personal freedom. It means, with many other rights, his right freely to labor, and to own the fruits of his toil. It is a curious law for the protection of labor which punishes the laborer for working. Yet that is precisely what this law does. The laboring barber engaged in a most respectable, useful, and cleanly pursuit, is singled out from the thousands of his fellows in other employments, and told that, willy nilly, he shall not work upon holidays, and Sundays after 12 o'clock noon. His wishes, tastes, or necessities are not consulted. If he labors, he is a criminal. Such protection to labor, carried a little further, would send him from the jail to the poor house. How comes it that the legislative eye was so keen to discern the needs of the oppressed barber, and yet was blind to his toiling brethren in other vocations? Steam car and street car operatives toil through long and weary Sunday hours; so do mill and factory hands. There is no Sunday period of rest, and no protection for the over-worked employes of our daily papers. Do these not need rest and protection? The bare suggestion of these considerations shows the injustice and inequality of this law. In brief, whether or not a general law to promote rest from labor in all business vocations may be upheld as within the due exercise of the police power as imposing for its welfare a needed period of repose upon the whole community, a law such as this certainly cannot. A law is not always general because it operates upon all within a class. There must be back of that a substantial reason why it is made to operate only upon a class."

The constitutionality of the barber closing law has been construed within the last three years in the supreme court of Illinois, New York, California, Washington and Missouri.

In Eden vs. People, 161 Ill. 296, considering such a law the supreme court states:

"By the act in question an attempt has been made by the legislature to inaugurate a radical change in the law as to a class of the laboring element of the state,—the barbers. This statute, as has been seen,

declares "that it shall be unlawful for any person or persons to keep open any barber shop or carry on the business of shaving, haircutting, or tonsorial work on Sunday." That act is plain and its meaning is obvious. The owner of a place where is carried on the barber business is prohibited from doing any business whatever during one day in the week. He may have in his employ a dozen men, and yet during one day in seven he is deprived of their labor, and also deprived of his own labor. The income derived from his place and his own labor and the labor of his employes are his property, but the legislature has by the act taken that property from him. The journeyman barber who works by the day or the week or for a share of the amount he may receive from customers for his services is by the law denied the right of laboring one day in the week. He may rely solely upon his labor for the support of himself and family, his labor may be the only property that he possesses, and yet this law takes that property away from him. His labor is his capital, and that capital is all the property he owns. Can a law which takes that from the laborer be sustained? The constitution of the United States says the state shall not deprive any person of property without due process of law, and our state constitution declares the same thing. What is understood by the term "due process of law" is not an open question. "Due process of law" is synonymous with "law of the land," and the "law of the land" is general public law, binding upon all the members of the community, under all circumstances; and not partial or private laws, affecting the rights of private individuals or classes of individuals.

"Is the act in question a law binding upon all the members of the community? A glance at its provisions affords a negative answer. The act affects one class of laborers, and one class alone. The merchant with his clerks, the restaurant keeper with his employes, the clothing house proprietor, the blacksmith, the livery stable keeper, the owners of street car lines, and people engaged in every branch of business, are each and all allowed to open their respective places of business on Sunday, and transact their ordinary business if they desire; but the barber, and he alone, is required to close his place of business. The barber is thus deprived of property without due process of law, in direct violation of the constitution of the United States and of this state."

In Ex Parte Leo Jentzsch, 32 L. R. A., p. 664, the supreme court says:

"A law is not always general because it operates upon all within a class. There must be back of that a substantial reason why it is made to operate only upon one class, and not generally upon all. As was said in Pasadena vs. Stinson (91 Cal. 238), "The conclusion is, that although a law is general and constitutional as it applies equally to all persons embraced in a class formed upon some natural or intrinsic or constitutional distinction, it is not general or constitutional if it confers particular privileges, or imposes peculiar disabilities or burdensome conditions in the exercise of a common right upon a class of persons, arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law, and in Dorsey vs. Mayor, etc. San Jose, 104 Cal. 642): "The classification, however, must be founded upon differences which are either defined by the con-

stitution or natural, and which will suggest a reason which might be held to justify the diversity of legislation.'" And in that case it was held, as stated in the syllabus of the case, "A statute prohibiting barbers to carry on business after twelve o'clock on Sundays, or on a legal holiday, and applying to no other class of labor, is unconstitutional, unjust and unreasonable, working an invasion of individual liberty, since it is based upon no distinction to justify singling out that class of labor."

In the case of City of Tacoma vs. Kreck (Wash.), 46 Pac. Rep. 255, the court held such a law unconstitutional, on the ground that it was class legislation, and, in delivering the opinion, the court said:

"One class of people is singled out by the law, while other laboring people, in different characters of employment, are allowed to prosecute their work. Conceding for the purpose of this case, the right of the legislature to pass a law restraining or forbidding manual labor on Sunday, yet under the provisions of our constitution, the restrictions must be imposed alike upon all residents of the state, or the effect of the law would be to work privileges and immunities upon one class of citizens which did not equally belong to all other citizens. * * * It is true there are some decisions, notably in the state of New York, holding the contrary view; but we are satisfied with the reasoning of the cases cited, and, therefore, hold the law unconstitutional."

In the case of State vs. Granneman, 33 S. W. Rep. p. 787 (Mo.), the supreme court of Missouri decided such a law unconstitutional, and says:

"A general law prohibiting all kinds of labor on Sunday may not only be passed, but we have such a law now upon our statute books. The fact that laboring on Sunday may be prohibited by proper legislation, as a police regulation, does not place the act beyond or without the inhibition of our constitution. If the act is valid, then why may not the legislature, by one act, forbid the farmer from laboring on Sunday, by another a blacksmith, and so on, until all kinds of labor on that day are prohibited? Clearly, this may be done by a general law embracing all kinds of labor. The object of the constitution is manifest. It was to prohibit special legislation, and to substitute general law in place of it, whenever by general law the same end could be accomplished."

The supreme court of New York in the case of People vs. Hanover, 149 N. Y., p. 195; 31 L. R. A. 689, has held such a law constitutional, but that decision is in conflict with the great weight of authority, and, upon the question of class legislation, is directly in conflict with the great weight of authority. Three of the judges dissented from the opinion. In deciding that case, the court says:

"The statute treats all barbers alike within the same localities, for none can work on Sunday outside of New York and Saratoga, but all may work in these places until a certain hour, all are, therefore, treated

alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

We think that the case of Johnson vs. St. Paul and Duluth R. R. Co., 43 Minn. 223), states the true principle distinguishing class legislation, where it is said:

"Not only must it treat alike under the same circumstances all who are brought within its influence, but in its classification it must bring within its influence all who are under the same conditions."

As hereinbefore stated there is no distinction between the labors of a barber and other kinds of labor which can avail to distinguish them as a body peculiar to themselves, requiring legislative protection. In a dissenting opinion from the New York case, Judge Gray says:

"But this legislation, in my opinion, is particularly objectionable, and deserving of judicial condemnation, for the reason that it discriminates unreasonably in dealing with those who are engaged in the pursuit of a lawful avocation. It certainly must be implied in our governmental system that legislation shall be equal to all, and just in its commands."

In the same case, Justice Bartlett dissenting, says:

"I think the act under consideration is vicious class legislation, and in direct violation of the 14th amendment of the Constitution of the United States, which provides that 'No state shall deprive any person of life, liberty or property without due process of law, or deny any person within its jurisdiction the equal protection of the law.' "

Upon what ground, then, can this specimen of legislation escape the criticism that it is class legislation?

"To avoid the imputation of class legislation, the classification in cases of special legislation must be made upon some apparent, natural reason, some reasons suggested by necessity, by such a difference in the situation and circumstances of the subjects placed in a different class as suggests the necessity or propriety of different legislation with respect to them." Nichols vs. Walter (37 Minn. 264); Lavalle vs. St Paul, Minneapolis & Manitoba R. R. Co. (40 Minn. 249); Johnson vs. St. Paul & Duluth R. R. Co. (43 Minn. 22).

That the work of a barber is "work of necessity" has been universally conceded. In People vs. Hanover, supra, Judge Bartlett in his dissenting opinion stated:

"The claim that the work of the barber is one of necessity, needful during the early hours of Sunday for the comfort of the community, rests upon years of practical construction of the various laws regulating the observance of the Sabbath."

We therefore submit that such an act of the legislature deprives a barber of property, "without due process of law," and denies the equal protection of the law to that class known as barbers.

II.

When the ostensible object of an enactment is to secure the public comfort, welfare or safety, it must appear to be adapted to that end; it cannot invade the rights of persons and property under the guise of a police regulation when it is not such in fact.

Having reached the conclusion that the act in question is class legislation, now if this conclusion is proper, and the act in question is of that sort so universally and repeatedly condemned by the court, then the act cannot stand unless it shall be found that the legislature has properly exercised the police power which is inherent in the government. Whether this has been done is a question for judicial determination.

In Railway vs. Jacksonville (67 Ill. 37, p. 40), the court said:

"This power is inherent in the state, and it cannot part irrevocably with its control over that which is for the health, safety and welfare of society. Like other powers of government, there are constitutional limitations to its exercise. It is not within the power of the general assembly under the pretense of exercising police power of the state to enact laws not necessary to the preservation of the health and safety of the community, that will be oppressive and burdensome upon its citizens. If it should prohibit that which is harmless in itself or command that to be done which does not tend to promote the health, safety or welfare of society, it would be an unauthorized exercise of power, and it would be the duty of the court to declare such legislation void."

If, therefore, it be urged in behalf of the validity of the act under examination, that it is an exercise of the police power, the court will closely scrutinize the contention, in view of the character of the legislative attempt, and will determine whether the police power has, or has not, been reasonably applied to a proper subject.

In order to justify so harsh an application of that power, there must appear to be something peculiarly baneful or prejudicial to the public health, safety or welfare, in the very nature of the subject affected. Is such the nature of the barber business?

In the case of Richmond vs. Moore (107 Ill. 429), on page 439, the court, having under consideration the observance of the Sabbath, in order, seemingly, to find an extreme example, and by way of reductio ad absurdum, says:

"Must a person be criminally punished for writing a letter to a friend on Sunday, or a barber for shaving a customer, or a person for

selling a cigar, or purchasing and reading a newspaper on Sunday; or for almost innumerable like acts?"

And so, neither from universal experience and knowledge, nor from the records, do we discover anything objectionable, or which is not most innocent and praiseworthy in the barber business, as conducive to neatness and cleanliness, which is, indeed, "next to Godliness." Neither the health nor the welfare of the public at large are injuriously affected; and, regarding the barbers themselves, who do the work, are they overworked in any special manner, and does their condition particularly call for legislative tutelage."

They may be required to stand long hours, but the records do not show that—and from universal knowledge it is well known that their work is not laborious, and their hours not particularly long. But, if it were so, so is that of the conductor and motorman, of the sales girl, of the servant girl, of the printer, and hundreds of others that may be called to mind. In other respects the work of the barber is not laborious, but is highly sanitary, and even luxurious.

If left to their own contracts and will to regulate their own periods of rest and work, are barbers, as a class, incompetent to do so? Surely so gross an insult to their intelligence and manhood cannot be countenanced. The legislature has not seen fit to make any such defense of the legislation in question. Neither in the title, nor in any part of the act, is it so much as hinted that the act is a sanitary or public regulation, but, on the contrary, it is an amendment to a general law, which, by the express declaration of the legislature, was passed to regulate and enforce the observance of the Sabbath day. And even though it had called it such, the constitutional rights of the people cannot be taken away "under the guise of a police regulation when it is not such in fact."

In considering this law, the court, if it sustains it at all, must be able to sustain it as a proper exercise of the police power, and not from a religious standpoint. As was stated in Ex Parte Leo Jentzsch—

"Under a constitution which guarantees to all equal liberty of religion and conscience, any law which prohibits an act not in itself contra bonus mores, because that act is repugnant to the beliefs of one religious sect, of necessity interferes with the liberty of those who hold to other beliefs, or to none at all. Liberty of conscience is preserved alike to the followers of Christ, to the Buddhist and the Mohammedan; to all who think that their tenets alone are illuminated by the light of divine truth; but it is equally preserved to the skeptic, agnostic, atheist, and infidel, who says in his heart, 'There is no God'; so it has come to be the

established rule in this state to view and construe such laws as civil and secular enactments. Thus construed, these laws, when decreed valid, are upheld as proper exercise of the police power, as an exercise of the legislative prerogative to regulate the relations, contracts, intercourse and business of society at large, and its particular members with respect to each other. Herein it is held that the legislature may pass laws for the preservation of health and the promotion of good morals. * * * Every individual is allowed so much liberty as may exist without impairment of the equal rights of his fellows. Our institutions are founded upon the conviction that we are not only capable of self-government as a community, but what is of legal necessity, that we are capable to a great extent, of individual self-government. * * * The spirit of a system such as ours is, therefore, at total variance with that which, more or less veiled, still shows in the paternalism of other nations. * * * In brief, we give the individual the utmost possible amount of liberty, and with that guaranteed him, he is treated as a person of responsible judgment, not as a child in his nonage, and is left free to work out his own destiny, as impulse, education, training, heredity and environment direct him. So, while the police power is one whose proper use makes potently for good, in its undefined scope and inordinate exercise lurks no small danger to the republic, for the difficulty which is experienced in defining its just limits and bounds affords a temptation to the legislature to encroach upon the rights of citizens with experimental laws, none the less dangerous because well meant. We think that the act under consideration gives plain evidence of such encroachment."

In the case of Ritchie vs. The People (155 Ill. 110), the court says:

"The police power of the state is that power which enables it to promote the health, comfort and welfare of society. It is very broad and far-reaching, but is not without its limitations. Legislative acts passed in pursuance of it must not be in conflict with the constitution, and must have some relation to the end sought to be accomplished; that is to say, to the comfort, welfare or safety of society. When the ostensible object of an enactment is to secure the public comfort, welfare or safety, it must appear to be adapted to that end; it cannot invade the rights of persons and property under the guise of a mere police regulation when it is not such in fact."

In the Ritchie case, the protection intended by the legislature was in behalf of women working in factories, and both the subject and the language of the act bore some justification on their face for the exercise of the police power, but the court considered the absolute rights of liberty and property and to contract without hindrance so strongly in favor of persons, women as well as men, that it overshadowed in importance the possible benefit which its restriction might be to the general health and welfare.

In how far greater degree does the sound logic of that opinion lead to the unanswerable conviction when applied to the matters herein

presented. When work, innocent in itself, harmless, supplying a great public demand, and promotive of general morality and cleanliness is, without apology or explanation, branded as criminal, when a species of liberty and property—for labor is property—belonging to a very minute portion of the total of wage earners or property holders, is summarily taken away from its possessors without compensation or reward.

In Judge Gray's dissenting opinion in the case of People vs. Hanover, supra, he says in regard to the Sunday Barber Law.

"I cannot suppose that it is to be defended as a proper exercise of the Sunday law of the state; that law includes in the "works of necessity', which it permits 'whatever is needful for the good order, health or comfort of the community.' The occupation of the barber has not been deemed unlawful under it, and it would look like a relapse into the narrow groove of earlier Puritanical belief if we should now regard it as inconsistent with the due observance of the Sabbath day. Conceding, as I do, the legislature a wide range in the exercise of what is known as the police power, I think that in this piece of legislation it has over stepped the limitations and has infringed upon the constitutional guaranties which, in effect, assure to us the enjoyment of our liberty and of our property in all reasonable ways. While it has been frequently observed that it is difficult to define the limits of the police power of the state, it is, nevertheless, agreed that an enactment in that direction must be one having reference to the comfort, the safety, or the welfare of society. * * * It cannot seriously be said that the defendant's business is one that conflicts with the comfort, safety or welfare of the community, when carried on on the first day of the week, called Sunday. * * * It is one that not merely conduces to the comfort of the individual, but promotes his decent appearance as a member of the community, and it is quite impossible to conceive of the business as in any reasonable way militating against the requirements of society with respect to the Sabbath day."

We are conscious of the fact that the American people are religious people and desirous of observing the Sabbath day, and that it is for the general good that the day be upheld as a day of rest and recreation from daily toil and business. We believe that it is a most beneficial and praiseworthy institution; and it is undeniably within the power of the legislature to pass laws for the regulation of its observance as a day set apart for religious worship, in so far as what amounts to a desecration of the day, and it is within their power to pass sanitary laws for the purpose of securing the welfare of the community. But we do not believe that such power exists so far as to interfere with, and prevent acts which are necessary to the health and comfort of the community, and which, from time immemorial, have been excepted from

the operation of the Sunday statute, and which no sincere and just man can say interferes with the due observance of the day.

And we believe that a special law picking out a certain class—one class—of laborers and saying specifically that they shall not labor on that day, is a deprivation to them of their property and clearly class legislation.

The strength and beauty of our American institutions, the glory of our liberty and that which distinguishes it from mere political liberty enjoyed by the European nations, is individual freedom, including not only the constitutional guaranties, but also those inalienable rights, unsurrendered by the social compact, cherished by all Americans as the very spirit and coloring of our freedom, and which cannot be wrested from them by majorities, nor interfered with by government, and for the defense of which they depend upon the courts of the land.

If those very persons who are most zealous in their efforts to support such a legislative mishap as that here attacked were but to exercise their foresight and reason, they could not fail to perceive the germ which they are so carefully fostering will, if developed to its full, be the means of undermining the very foundation of their liberty and those rights for which they clamor. If the great principle of universality in our laws is demolished, and in its stead paternalism and class legislation arise, it were difficult to forecaste the measure of evil that would result.

We respectfully submit that the order of the court below should be reversed, and the plaintiff in error be granted a new trial.

ALBERT E. CLARKE,
Attorney for Plaintiff in Error,
Minneapolis, Minn.

Supreme Court of the United States.

PAUL J. PETIT,
Plaintiff in Error,
VERSUS
STATE OF MINNESOTA,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR DEFENDANT IN ERROR

Statement of the Case.

Plaintiff in error, one Paul J. Petit, was arrested by virtue of a complaint and warrant issued thereupon for a violation of Section 6513 of the General Statutes of Minnesota for 1894, which complaint was in the following terms:

> "State of Minnesota, County of Hennepin ss.
>
> Municipal Court, City of Minneapolis.
>
> "William McQuid, being duly sworn, makes complaint to the above named court, and says that, on the 6th day of March, A. D. 1898, at the city of Minneapolis, in said county of Hennepin and state of Minnesota, Paul J. Petit, then and there being, did wilfully, unlawfully, and wrongfully do and perform labor on said

day, which said day was then and there the first day of the week, commonly called Sunday, in that said Paul J. Petit did then and there keep open a barber shop, for the purpose of cutting hair and shaving beards, at that certain barber shop known, designated and described as number 600 Nicollet Avenue, and did then and there in said barber shop, wilfully, unlawfully and wrongfully shave with a razor the face and beard of one John Doe, whose true name is to complainant unknown, which said labor so done as aforesaid was not then and there a work of necessity or charity, contrary to the statute in such case made and provided, and against the peace and dignity of the state of Minnesota.

Wherefore, complainant prays that said offender may be arrested and dealt with according to law.

"W. McQUOID.

"Sworn to and subscribed and complained of before me this 7th day of March, A. D. 1898.

"H. MOORE,

"Deputy Clerk of Municipal Court."

The case was tried March 16, 1898, by the Court without a jury; defendant was convicted and on March 28, 1898, was "ordered" to pay a fine of ten dollars, and in default thereof, be imprisoned in the workhouse of the City of Minneapolis, until said fine was paid, not exceeding ten days, with stay of sentence, and an appeal was taken from the order of the said municipal court denying defendant's motion for a new trial.

The cause was brought on for hearing before the

Supreme Court of Minnesota, and under date of December 2nd, 1898, the said Supreme Court filed its opinion in the same, holding adversely to the contentions of the defendant below, the cause being *State vs. Petit*, 77 N. W. R. 225, and deciding in favor of the validity of the entire act, including the proviso. Whereupon, and on 3rd day of January, 1899, a Writ of Error to this Court was sued out by plaintiff in error.

At the trial no evidence was introduced on the part of the defendant below, he resting at the close of the State's case.

THE LAW IN CONTROVERSY.

"All labor on Sunday is prohibited, excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community; Provided, however, that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards, shall not be deemed a work of necessity or charity."

Section 6513, General Statutes of Minnesota for 1894.

THE QUESTION IN ISSUE.

Does this law conflict with and violate that clause of the Constitution of the United States which provides that no person shall be deprived of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law?

ARGUMENT.

SUNDAY LAWS IN GENERAL.

Sunday laws from the time of the English statute, 29 Car. II., down to the present, have been universally recognized as valid legislative enactments and not in derogation of the several State Constitutions, which usually contain the same provisions forbidding class and special legislation, and practically the same provisions modeled after the "due process of law feature" of 14th Amendment to the Constitution of the United States.

These laws have been sustained by courts of last resort upon various grounds, but the result reached has been uniform, whether viewed from a religious standpoint or the standpoint of the political and civil welfare of a State's community. They make unlawful on Sunday that which would be deemed in law as innocent if done or performed on any other day of the week; and the laws themselves differ somewhat in terms and purposes. One class seeks to preserve the quiet and peace of the day and prohibits only the carrying on of such trades or avocations or the doing of such work or labor as the legislature deems to be of a peace disturbing nature; while another class seeks to provide a day of general rest from toil, and prohibits in general terms, all manner of work or labor on the first day of theweek, commonly called Sunday, but making a general exception in case of works of necessity or charity, and

extending in some instances, exemption to certain classes of trades or avocations in number great or small, as the legislature may, in its judgment, determine to be necessary.

Nor does an exemption from the operation of the law, of persons belonging to a religious society by whom any other day than the first day of the week is observed as a Sabbath, operate to render the law invalid on the ground of class legislation. Nor will the mere fact that certain trades or avocations are exempted from the operation of such a law invalidate the law, since it is for the legislature to say what may be or what may not be lawfully done on the day set apart for general rest or religious observance; it is for the legislature to say what trades or avocations shall be deemed and what shall not be deemed in law to be works of necessity or charity.

The legislature is the sole judge of the policy and expediency of the laws and of the classes selected as subject to or exempted from their operation.

State Authorities:

State vs. Wellett, 54 Mo. App. 310;
State vs. Ohmer, 34 Mo. App. 115;
Peo vs. Hanover, 149 N. Y. 195;
Lindenmuller vs. People, 33 Barb. 548;
Quarles vs. Arkansas, 14 L. R. A. 192 and note;
Judefind vs. State, 22 L. R. A. 721 (Md.);
Bohl vs. State, 3 Tex. App. 683;
Tiedman on Pol. Powers, 184;
Cooley Const. Law, 6th Ed., 153-154;

Liberman vs. State, 26 Neb. 464;
Parker vs. State, 76 Lea, 476;
Ex Parte Andrews, 18 Cal. 679;
Bosworth vs. Swansey, 10 Neb. 363;
Com. vs. Harrison, 11 Gray, 308;
McPherson vs. Vil. of Chebause, 114 Ill. 46;
Com. vs. Hyneman, 101 Mass. 30;
Bucher vs. Fitchburg Ry., 131 Mass. 156;
Day vs. Highland St. Ry. Co., 135 Mass. 113;
Mueller vs. State, 76 Ind. 310;
Johns vs. State, 78 Ind. 332;
Bloom vs. Richards, 2 Oh. St. 387;
Scales vs. State, 47 Ark. 259;
Troewert vs. Decker, 51 Wis. 46;
Frolickstein vs. Mayer, 40 Ala. 725;
State vs. Railway Company, 24 W. Va. 783;
Shipley vs. State, 32 S. W. 489, (Ark.);
Swan vs. Swan, 21 Fed. 299;
State vs. Ludwig, 21 Minn. 202;

A shop is kept open on the Lord's day * * within the meaning of the statute, if all who please can obtain access thereto to buy, although the entrance is closed

Commonwealth vs. Harrison, 11 Gray, 308.

"The clause in the Constitution guaranteeing

the right of acquiring property does not deprive the legislature of the power of prescribing the mode of acquisition or of regulating the conduct and relations of the members of society in respect to property rights."

Ex parte Andrews, 18 Cal. 679.

The exemption from the operation of the Sunday laws of such persons as conscientiously observe the seventh day of the week as the Sabbath, does not grant immunities to one class which, upon the same terms, shall not apply to all, and is constitutional and valid.

Johnson vs. State, 78 Ind. 332;
Liberman vs. State, 26 Neb. 464.

A Sunday statute exempting druggists and others from the operation of its provisions is not unconstitutional, as a denial of equal rights, or as a special law.

Bohl vs. State, 3 Tex. App. 683.

A definition of necessary work meeting the requirements of the different classes is hardly possible, but it is not enough that it should be more convenient to do the work on Sunday than other days; it should be unforeseen, or if unforeseen, such as could not be provided against, and the necessity must not be of the party's own creation.

The state makes a *prima facie* case by proving that the defendant was prosecuting his work, not apparently a work of necessity; if it was a work of necessity, such as comes within

the exemption of the statute, the burden to show it is cast upon the defendant. The usual employment of a barber followed on Sunday as on other days of the week, is the performance of work prohibited by the Sunday statutes of Missouri.

State vs. Wellett, 54 Mo. App. 310.

In the case just cited the statute under which defendant was prosecuted for working at his trade as a barber on Sunday, provided as follows: "Every person who shall either labor himself or compel or permit his apprentices or servants or any other under his charge or control to labor or perform any work other than household offices of daily necessity or other works of necessity or charity * * shall be deemed guilty of a misdemeanor." The court below tried the case without a jury and held that the work done by defendant did not come within the exemption, and was not a work of necessity.

The validity of Sunday laws has been uniformly recognized by this Court. Such laws are a legitimate exercise of the police power of the State.

Hennington vs. Georgia, 163 U. S. 299;
United States vs. Ball, 163 U. S. 671;
Stone vs. United States, 167 U. S. 195;
United States vs. Gates, 148 U. S. 134;
Monroe Cattle Co. vs. Becker, 147 U. S. 56;
Ball vs. U. S., 140 U. S. 131;

Street vs. U. S., 133 U. S. 306;
Gumbell vs. Pitkin, 124 U. S. 146;
Gibbs & Sterrett Manf. Co. vs. Brucker, 111 U. S. 597;
Pence vs. Langdon, 99 U. S. 578;
Powhattan Steamboat Co. vs. R. R. Co., 24 How. 247;
Phil., Wil. & Bal. R. R. Co. vs. Towboat Co., 23 How. 209;

This Court, speaking in *Phil., Wil. & Bal. R. Co. vs. Towboat Co., supra*, used the following language:

> "The law relating to the observance of Sunday defines the duty of a citizen of the state and to the state only For a breach of the duty, he is liable to the fine or penalty imposed by the statute and nothing more."

SUNDAY LAWS AS APPLIED TO BARBERS.

Sunday laws forbidding in general terms all manner of work or labor on Sunday except works of necessity and charity, apply to the ordinary trade or avocation of a barber, and such usual trade or avocation is not a work of necessity or charity within the meaning of the statutory exceptions.

State vs. Frederick, 45 Ark. 347;
Commonwealth vs. Waldman, 140 Pa. St. 89;
Commonwealth vs. Williams, 1 Pearson. 61 (Pa.);
Phillips vs. Innes, 4 Clark & Fin. 234;

Commonwealth vs. Dextra, 143 Mass. 28

People ex rel. Hobach vs. Sheriff Kings Co., 13 Misc. R. 587;

People vs. Belleti (Mich.) 22 L. R. A. 696;

See, also, 15 *Central Law Journal,* 145;

The equal privileges or immunities of citizens are not violated by prohibiting the business of a barber on Sunday under greater penalties than those imposed upon other business, or because an exception is made to those who conscientiously observe the seventh day of the week as the Sabbath, nor is such a statute invalid as class legislation.

People vs. Bellett, 22 L. R. A. 696 (Mich.)

"It was not necessary that the indictment allege that it (barbering) was not a work of necessity or charity. The courts will take judicial notice that the shaving of his customer by a barber is a worldly labor or work done by him in the course of his ordinary calling, and not within the exception of the statute."

State vs. Frederick, 45 Ark. 347.

"It is illegal for a barber to shave persons on Sunday. The fact that they were sick on Saturday, and the barber shaved them the next day as a matter of accommodation, without compensation, makes no difference. The act declares whenever any person shall do or perform any worldly employment or business whatsoever on the Lord's Day, commonly called

> Sunday, works of necessity and charity only except, etc. I cannot, after the most careful consideration, bring my mind to believe that a barber is any more authorized or directed by law to keep his shop open and pursue his daily avocation on Sunday, than the blacksmith or cabinetmaker. It is true, that the trade is less noisy, and not so likely to disturb the community as the others, but it is not less noisy than that of a tailor or watchmaker. It is more immediately connected with personal comfort and cleanliness than those other avocations, but not more so than that of laundress. * * * If it is found to be essential to the convenience of society that it should be pursued, the people can call on the legislature to change the law."
>
> *Commonwealth vs. Williams,* Pearson, 61 (Pa.).

In *Commonwealth vs. Dextra,* 143 Mass. 28, a conviction was sustained in the case of a barber indicted for keeping open his shop for the purpose of carrying on his business, and it was there held that, under the Massachusetts act, the *keeping open* of the shop on the Lord's day for the purpose of doing business therein, is prohibited, whether the business is one of necessity or charity, or not.

The cases cited by plaintiff in error are not in point and cannot be considered as authority in considering the question at bar.

In the case of *Eden vs. People,* 161 Ill. 296, cited by plaintiff in error, it was conceded in the argu-

ment that if the legislature had enacted a law prohibiting all business on Sunday, its validity could not be questioned, and the court point out the difference in the Illinois law and that of other States having laws practically similar to the Minnesota law, and say:

> "This state has not followed the other states in the adoption of the English statute, but we have legislated on this subject for ourselves in a manner thought to be for the best interests of our people. Paragraph 261, Crim. Code, is as follows: 'Whoever disturbs the peace and good order of society, by labor, works of necessity and charity excepted, or by any amusement * * * on Sunday, * * * shall be fined.' (Then follow a number of exceptions) * * * There is a wide and well marked distinction between the English statutes and ours. The English statute prohibits labor and business on Sunday, while our statute merely prohibits labor and amusements which disturb the peace and good order of society. * * *
>
> "By the act in question an attempt has been made by the legislature to enact a radical change in the law as to a class of the laboring elements of the state, that is to say, the barber, and it is provided, 'that it shall be unlawful for any person or persons to keep open any barber shop or carry on the business of shaving, hair-cutting or tonsorial work on Sunday within this state,' and providing a penalty not to exceed $200 for each and every offense. * * *
>
> "If the public welfare of the state demands that all business or labor of every description, excepting works of necessity and charity shall cease on Sunday, * * * the legislature

> has the power to enact a law requiring all persons to refrain from their ordinary callings on that Day, * * * but when the legislature undertakes to single out one class of labor, and that alone, it transcends its legitimate powers."

In the case of *City of Tacoma vs. Krech*, 46 Pac. 255, cited by plaintiff in error, defendant was convicted of violating the ordinance of the City of Tacoma which prohibited barbers from pursuing their calling of shaving or doing any work in connection with their trade for compensation on Sunday. Sec. 7250 of the Statutes of Washington provides that places of amusements be closed on Sunday, and section 7251 provides, that it shall be unlawful for any person or persons of this State to open on Sunday for the purpose of trade or sale of goods, wares or merchandise, any shop, store or building or place of business whatsoever, with certain exceptions.

It was held in this case that the ordinance was invalid and of no binding force. Manifestly the ordinance was in conflict with the general State enactment, and the state constitution. The Sunday law applied only to places *where goods are offered for sale*, and it was so held.

In the case of *People vs. Jentzsch*, 32 L. R. A. 664, cited by plaintiff in error, the Supreme Court of California held that the act prohibiting a barber from keeping open his shop on Sunday was special legislation and invalid. But under the Sunday laws as they stood at the time this case was decided, any laborer in California, except a barber, could labor on Sunday with impunity. The act of 1893

provides that "every person employed in any occupation of labor shall be entitled to one day's rest therefrom in seven, and it shall be unlawful for any *employer* of labor to cause his employes or any of them, to work more than six days in seven, provided however, the provisions of this law should not apply to any case of emergency."

Any person violating the provisions of the act was declared to be guilty of a misdemeanor. It will be seen that this Sunday law was aimed at the employer, not at the employe, while the law considered in the Jentzsch case provided that "every person who, as proprietor, manager, lessee, employe or agent, keeps open or conducts * * * any barber shop, * * * or who engages at work or labor as a barber in any such shop * * * on Sunday, or a legal holiday, after 12 o'clock m. of said day, shall be deemed guilty of a misdemeanor." This act clearly discriminates against the class of barbers.

The case of *State vs. Granneman*, 33 S. W. 784, is cited by plaintiff in error.

Attention was called *supra*, in the case of *State vs. Wellett*, to the Missouri law as it stood at the time that case was decided. Subsequently, and in 1895, an act was passed making it a misdemeanor for any person to carry on the business of barbering on Sunday, and providing a penalty. The prosecution of *State vs. Grannaman* was instituted, and the law was attacked on the ground that it violated the provision of the state constitution which prohibited local and special legislation, where a general law

could be made applicable, and providing that whether a general law could have been made applicable in any case, must be a judicial question, and as such be judicially determined without regard to any legislative assertion on that subject. It was held in that case that barbering is labor. The court there say:

> "The policy of our laws is to compel the observance of Sunday as a day of rest, and if this may be done by a general law applicable alike to all classes and kinds of labor, then the act falls within the inhibition of the constitution; * * * that a general law prohibiting all kinds of labor on Sunday cannot only be passed but that we have such a law now on our statute books is indisputable."

It will be observed in the Granneman case, that with a general law on the statute books, a prosecution was instituted under the special act; while the complaint in the case at bar was drawn under the general law and specifically alleges "That the said Paul J. Petit then and there being, did willfully, unlawfully and wrongfully do and perform labor on said day * * * and that Paul J. Petit did then and there keep open a barber shop for the purpose of cutting hair and shaving beards * * * and did then and there * * * shave with a razor, the face and beard of one John Down, * * * which said labor * * * was not then and there a work of necessity or charity. * * *"

Nor is the law in conflict with the 14th Amendment to the Constitution of the United States, which

does not prohibit legislation which is limited either in the object to which it is directed or in the territory within which it is to operate; nor can the statute be said to be class legislation in violation of the same, nor does the law operate to deprive plaintiff in error of property, without due process of law.

Hayes vs. Missouri, 120 U. S. 69;
Missouri vs. Lewis, 101 U. S. 22;
Barbier vs. Connolly, 113 U. S. 27;
Missouri Pac. Ry. Co. vs. Mackey, 127 U. S. 205;
Lavelle vs. St. Paul, Minneapolis & W. R. R. Co., 40 Minn. 249;
Johnson vs. St. Paul & Duluth R. R. Co. 40 Minn. 222.
Beer Co. vs. Mass. 97 U. S. 25;
Dent vs. West Va., 29 U. S. 124;
Mo. v. Lewis, 101 U. S. 22;
Yick Wo vs. Hopkins, 118 U. S. 370;
R. R. Co. v. Humes, 115 U. S. 512;
M. & St. L. Ry. Co. vs. Beckwith, 129 U. S. 26;
Soon Hing vs. Crowley, 113 U. S. 703;
Powell vs. Pa., 127 U. S. 678;
Mugler vs. Kan., 123 U. S. 663.

The case at bar was tried by the Court below without a jury. Plaintiff in error offered no evidence tending to show that at the time charged he was engaged upon a work of necessity or charity. In fact he offered no evidence at all, but rested his case on

the *prima facie* showing made by the State, and the Court was, under all the authorities, warranted in finding that the act charged was not one of necessity or charity; the general finding of guilty found all of the material facts charged in the complaint to be true.

But conceding, for the purposes of argument only, that the proviso of March 7th, 1887, to the Minnesota Sunday law, providing that "the keeping open of the barber shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity," is invalid as class legislation, its invalidity would not operate to invalidate the remaining portion of the statute which prohibits all labor, that of barbers among others, on Sunday excepting only works of necessity or charity.

The prosecution was contested mainly upon the ground that the proviso of 1887 was unconstitutional, but the prosecution was brought squarely within the terms of that portion of the general Sunday law, the validity of which must be conceded.

The utmost plaintiff in error could have claimed in this Court is that the proviso of 1887 is invalid as being class legislation, in that it applies a different rule to the class of barbers, denying to them alone the right to have a jury determine in each case where a barber is prosecuted for keeping his shop open on Sunday for the purpose of cutting hair and shaving beards, whether or not the act charged was a work of necessity or charity. It does not alter the rule, however, where a barber is prosecuted for actually

shaving or cutting the hair of a customer on Sunday. He is still liable to prosecution under the conceded general portions of the Sunday law. The complaint in the case at bar charged the keeping open of a barber shop on Sunday for the purpose of shaving beards and cutting hair, as well as the actual shaving of a customer on that day, and it charges that said labor was not one of necessity or charity.

We submit that any point which plaintiff in error might have raised on the validity of the proviso of 1887 as applied to the case at bar, he has now waived it by neglecting at the trial to offer evidence to show that the act of keeping open the barber shop on Sunday, as charged in the complaint, was a work of necessity or charity. Had he made a tender of such evidence and had the court refused to admit the same, the point which he makes here might have been saved, but not otherwise.

But we contend that the legislature had full power to declare what act shall be deemed and what not deemed, works of necessity or charity within the meaning of the law.

CONCLUSION.

In conclusion we contend:

First: That Section 6513 of the General Statutes of Minnesota, 1894, is not void for the reason that the proviso of 1887 is class legislation.

Second: That the proviso of 1887 is valid; that the legislature has the power to determine with reference to the Sunday enactment, what shall be

deemed and what shall not be deemed works of necessity and charity, within the meaning of the exception; and that this proviso is not class legislation within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Third: That the entire Sunday statute of Minnesota, including the proviso, is valid, and that its exercise is within the lawful police powers of the State.

Fourth: That plaintiff in error has waived any question which might have been raised had he offered evidence on the trial tending to show that the action complained of was a work of necessity or charity within the exception of the statute.

For the reasons advanced, we respectfully urge that the judgment hereunder review be affirmed.

W. B. DOUGLAS,
Attorney General of Minnesota.

C. W. SOMERBY,
Ass't Att'y Gen.

Attorneys for Defendant in Error.

PETIT *v.* MINNESOTA.

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

No. 194. Argued March 16, 1900. — Decided April 9, 1900.

Section 6513 of the General Statutes of Minnesota for 1894 provides that "All labor on Sunday is prohibited, excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community; *Provided, however*, That keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards, shall not be deemed a work of necessity or charity." *Held* that the legislature did not exceed the limits of its legislative police power in declaring that, as a matter of law, keeping barber shops open on Sunday is not a work of necessity or charity, while, as to all other kinds of labor, they have left that question to be determined as one of fact.

THE case is stated in the opinion.

Mr. Joseph W. Molineaux for plaintiff in error. *Mr. Albert E. Clarke* filed a brief for same.

Mr. W. B. Douglas for defendant in error. *Mr. C. W. Somerby* was on his brief.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

Petit was tried and convicted of keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards, contrary to section 6513 of the General Statutes of Minnesota for 1894, and the judgment was affirmed by the Supreme Court of Minnesota. 74 Minn. 376. This writ of error was then allowed.

Section 6513 reads as follows: "All labor on Sunday is prohibited, excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for good order, health or comfort of the community: *Provided, however*, That keeping open a barber shop on Sunday

for the purpose of cutting hair and shaving beards, shall not be deemed a work of necessity or charity."

We have uniformly recognized state laws relating to the observance of Sunday as enacted in the legitimate exercise of the police power of the State. The subject was fully considered in *Hennington* v. *Georgia*, 163 U. S. 299, and it is unnecessary to go over the ground again. It was there said: "The legislature having, as will not be disputed, power to enact laws to promote the order and to secure the comfort, happiness and health of the people, it was within its discretion to fix the day when all labor, within the limits of the State, works of necessity and charity excepted, should cease." And these observations of Mr. Justice Field, then a member of the Supreme Court of California, in *Ex parte Newman*, 9 Cal. 502, whose opinion was approved in *Ex parte Andrews*, 18 Cal. 678, in reference to a statute of California relating to that day, were quoted: "Its requirement is a cessation from labor. In its enactment, the legislature has given the sanction of law to a rule of conduct, which the entire civilized world recognizes as essential to the physical and moral well-being of society. Upon no subject is there such a concurrence of opinion, among philosophers, moralists and statesmen of all nations, as on the necessity of periodical cessation from labor. One day in seven is the rule, founded in experience, and sustained by science. . . . The prohibition of secular business on Sunday is advocated on the ground that by it the general welfare is advanced, labor protected, and the moral and physical well-being of society promoted." Well-nigh innumerable decisions of the state courts have sustained the validity of such laws.

But it is contended that by reason of the proviso this act must be held unconstitutional, because thereby restricted in its operation on the particular class of craftsmen to which Petit belonged as contradistinguished from other classes of labor. The proviso was added in 1887 to section 225 of the Penal Code of Minnesota of 1885, (Laws, Minn. 1887, c. 54.)

By the original statute all labor was prohibited, excepting the works of necessity or charity, which included whatever was needful during the day for the good order, health or comfort

of the community. As the Supreme Court said, if keeping a barber's shop open on Sunday for the purposes of shaving and hair cutting was not a work of necessity or charity, within the meaning of the statute as it originally read, the amendment did not change the law. And it would be going very far to hold that because out of abundant caution the legislature may have sought to obviate any misconstruction as to what should be considered needful, during that day, for the comfort of the community, as respected work generally so desirable as tonsorial labor, by declaring the meaning of the statute as it stood, therefore the law was transferred to the category of class legislation. The legislature had the right to define its own language, and the statute thus interpreted could not reasonably be held to have made any discrimination.

The question is not whether the bare fact of shaving some particular individual under exceptional circumstances might not be upheld, but whether the public exercise of the occupation of shaving and hair cutting could be justified as a work of necessity or charity.

In *Phillips* v. *Innes*, 4 Clark & Finnelly, 234, the House of Lords held that shaving on Sunday was not a work of necessity or mercy or charity. The act, 29 Car. II, c. 7, prohibited work on the Lord's day, "works of necessity and charity only excepted;" and by the Scotch statute of 1579, c. 70, it was enacted, among other things, that "no handy-labouring or working be used on the Sunday;" and the same prohibition was enacted by the statute of 1690, c. 7, which added to the private and public exercise of worship, "the duties of necessity or mercy." The case came to the House of Lords from the Court of Sessions, and Lord Chancellor Cottenham said: "This work is not a work of necessity, nor is it a work of mercy, it is one of mere convenience; and if your Lordships were to act upon this case as a precedent for other cases, founded upon no more than convenience, your Lordships would, I apprehend, be laying down a rule, by which the law of Scotland prohibiting persons from carrying on their ordinary business on Sundays, would be repealed, or rendered useless."

Lord Wynford concurred, saying: "It was not necessary that

people should be shaved on Sunday in a public shop; it was not an act of mercy, it was clearly an act of handicraft."

Lord Brougham was of the same opinion, and observed that "he whose object was gain, did not come within the exception."

In *Commonwealth* v. *Waldman*, 140 Penn. St. 89, 98, the Supreme Court of Pennsylvania said: "We are now asked to say that shaving is a work of 'necessity,' and therefore within the exceptions of the act of 1794. It is, perhaps, as much a necessity as washing the face, taking a bath, or performing any other act of personal cleanliness. A man may shave himself, or have his servant or valet shave him, on the Lord's day, without a violation of the act of 1794. But the keeping open of his place of business on that day by a barber, and the following his worldly employment of shaving his customers, is quite another matter; and, while we concede that it may be a great convenience to many persons, we are not prepared to say, as a question of law, that it is a work of necessity within the meaning of the act of 1794."

In *State* v. *Frederick*, 45 Arkansas, 347, the court ruled that: "The courts will take judicial notice that the shaving of his customers by a barber is a worldly labor, or work done by him in the course of his ordinary calling, and not within the exceptions of the statute."

On the other hand, the Supreme Judicial Court of Massachusetts held in *Stone* v. *Graves*, 145 Mass. 353, that it could not be ruled, as matter of law, that the work of shaving an aged and infirm person in his own house on the Lord's day was not a work of necessity.

And in *Ungericht* v. *State*, 119 Indiana, 379, it was held by the Supreme Court of Indiana that it must be left to the jury, as a question of fact, to determine, under proper instructions from the court, what particular labor, under the circumstances, would constitute a work of necessity.

We think that the keeping open by barbers of their shops on Sunday for the general pursuit of their ordinary calling was, as matter of law, not within the exceptions of the statute as it read before the amendment.

But even if the question whether keeping open a barber's shop

on Sunday for cutting hair and shaving beards, under some circumstances, was a work of necessity or charity was a question of fact under the original act, which was foreclosed as such by the amendment, the result is the same.

Assuming that the proviso did have this effect, the Supreme Court was of opinion that the classification was not purely arbitrary. The court pointed out that the law did not forbid a man shaving himself or getting some one else to shave him, but the keeping open a barber's shop for that purpose on Sunday; that the object mainly was to protect the employees by insuring them a day of rest; and said: "Courts will take judicial notice of the fact that, in view of the custom to keep barbers' shops open in the evening as well as in the day, the employés in them work more, and during later hours, than those engaged in most other occupations, and that this is especially true on Saturday afternoons and evenings; also that, owing to the habit of so many men to postpone getting shaved until Sunday, if such shops were to be permitted to be kept open on Sunday, the employés would ordinarily be deprived of rest during half of that day.

"In view of all these facts, we cannot say that the legislature has exceeded the limits of its legislative police power in declaring that, as a matter of law, keeping barbers' shops open on Sunday is not a work of necessity or charity, while as to all other kinds of labor they have left that question to be determined as one of fact."

We recognize the force of the distinctions suggested and perceive no adequate ground for interfering with the wide discretion confessedly necessarily exercised by the States in these matters, by holding that the classification was so palpably arbitrary as to bring the law into conflict with the Federal Constitution. *Orient Insurance Company* v. *Daggs*, 172 U. S. 557.

Judgment affirmed.